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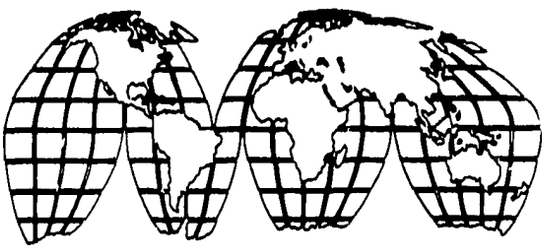

A Strategic Assessment of Legal Systems Development in Uruguay and Argentina

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The views and interpretations expressed in this report are those of the authors and are not necessarily those of the Agency for International Development.

This Working Paper is one of a number of case studies prepared for CDIE's assessment of USAID Legal Systems Development programs. As an interim report, it provides the data from which the assessment synthesis is drawn. Working Papers are not formally published and distributed, but interested readers can obtain a copy from the DISC.

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Executive Summary

In 1993 the Center for Development Evaluation and Information (CDIE) conducted a strategic assessment of USAID's Rule of Law (ROL) program in Uruguay and Argentina. The study was the last in a series of country assessments focusing on ROL development.

The decision to include Uruguay and Argentina in the study was made for a number of reasons. The two countries had recently adopted oral procedures in the national civil court (Uruguay) and in the penal court (Argentina) systems, making these cases interesting as countries which, it appeared, were embarking on major structural reforms. Furthermore, as advanced developing countries Uruguay and Argentina also broadened the sample of countries in the CDIE studies, to comprise an equal share of less developed countries (Honduras, the Philippines and Sri Lanka) and advanced developing countries (Colombia, Uruguay and Argentina).

Several conclusions can be drawn from the Uruguayan and Argentine cases that may have broader implications for the design of ROL strategies in host countries and future paths for USAID in this area. First, the current state of procedural reform in Uruguay and the creation of a presidential advisory committee for the selection of judges in Argentina indicate that judicial sector reforms--even those that are initiated by the state--may need more assistance in order to deepen and sustain the reform process. Such reforms may sometimes require the strengthening of mechanisms either through constituency building or institutional reforms that will ensure their enforcement and their endurance.

Second, the contrast between programs to support institutional and administrative changes in Uruguay and Argentina clearly demonstrates the importance of an elite consensus for change within the judiciary. Without the support and involvement of those that command authority in the judiciary, efforts to enhance the administrative capacity of the judicial system may only be marginal or, worse, ineffective.

The ability of donors to affect these processes depends on a number of factors. Among these are the pre-existing level of elite consensus in judicial and political circles, the independence of the judicial branch from other branches of government, the country's level of socioeconomic development, and the diversity and political and economic strength of the commercial sector.

In Argentina a deeply divided Federal Supreme Court and the extreme politicization of the Federal Court system by the executive branch have hindered the implementation of far-reaching reforms in the

judiciary. However, in spite of these constraints, Argentina's level of socioeconomic development offered another means to assist judicial change. A relatively active and professional civil society, a free media, high rates of literacy, and a diverse commercial sector have allowed USAID to work extensively in mobilizing popular demand for reform. This tactic has relied on the capacity of NGOs and the media to increase public awareness of problems in the legal system and to pressure the government for change. For this reason, USAID's program in Argentina provides an interesting study in the processes of developing a popular reform constituency and the prospects of achieving success through this approach.

In Uruguay elite interest in addressing perceived structural issues in the judicial sector have created a unique moment in the country's recent history to significantly assist in the deep reorganization and improvement of its judicial system. In most cases, the successful implantation of structural reforms indicates a high level of consensus for change in the upper reaches of the court system. This coupling of elite willingness to reform and the institutional wake of structural changes has provided a fertile opportunity for donor activity. The opening has permitted USAID to assist the judicial sector in implementing oral procedural reform, aid in the training of judges and attorneys, improve the administrative and managerial capacity of the judiciary, as well as introduce new techniques such as alterative dispute resolution to the courts.

Last, USAID programs in the two countries may demonstrate a potentially promising role for the Agency in the field of legal system strengthening. In Uruguay, USAID has served as a trailblazer for the involvement of the United Nations Development Program (UNDP) and the Inter-American Development Bank (IDB) in ROL activities. The flexibility of USAID's comparatively smaller grant program and its policy dialogue with the host government have allowed USAID to test and strengthen political will and build constituencies within the judicial sectors that later permitted government to government lenders, such as the IDB in Uruguay and quite likely the World Bank in Argentina, to then step in with greater confidence.

These experiences demonstrate that USAID can serve effectively in a trailblazing capacity in the ROL field. As the Agency looks ahead to a time of significantly constrained resources, the pioneering approach it has pursued in Uruguay and Argentina may appear increasingly attractive.

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Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
AOJ	Administration of Justice
CDIE	Center for Development Information and Evaluation
CEJU	*Centro de Estudios Jurídicos de Uruguay*
CEJURA	*Centro de Estudios Judiciales de la República Argentina*
CERES	*Centro de Estudios de la Realidad Económica y Social*
FLL	*Fundación la Ley*
FME	*Fundación para la Modernización del Estado*
FORES	*Foro de Estudios Sobre la Administracion de Justicia*
GOA	Government of Argentina
GOU	Government of Uruguay
IDB	Inter-American Development Bank
IDEA	*Instituto para lel Desarrollo de Empresarios en la Argentina*
MOJ	Ministry of Justice
NGO	Non-Governmental Organization
POA	Program Operations and Analysis
SCN	Supreme Court of the Nation (Argentina)
SCPBA	Supreme Court of the Province of Buenos Aires (Argentina)
USAID	U.S. Agency for International Development
USIS	United States Information Agency
UNDP	United Nations Development Program

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Preface

This report constitutes the last in a series of country assessments focusing on the Rule of Law (ROL) development, conducted by the Center for Development Evaluation and Information's (CDIE's) Program and Operations Assessments (POA) Division. This evaluation effort, begun in early 1992, has entailed six country studies altogether and has culminated in an evaluation synthesis, which now has been published and is available (*Weighing in on the Scales of Justice*, CDIE, February 1994). Since the current study on ROL development experience in Argentina and Uruguay was completed after the final synthesis report, readers desiring a fuller understanding of how the two countries studied in this paper fit into a larger ROL strategic framework may want to refer to the evaluation synthesis.

The Rule of Law has been determined to be a key component of the U.S. Agency for International Development's (USAID) democracy initiative. As such it has found prominent mention in the Agency's earlier Democracy Policy Paper (USAID 1991: 8-9), its current democracy strategy paper (USAID 1993 draft: 37, 40), and implementation guidelines (USAID 1994 draft: 14-16). Accordingly, there is a clear need to have an understanding of what is known about international donor assistance and its impact in the ROL sector, so as to better inform and guide future programming efforts. Yet as with the whole area of democracy, there has been very little practical evaluational methodology built up over time, making it difficult to assess experience in this sector.

It seemed eminently sensible, then, to launch a POA evaluation of ROL development. This enterprise began in 1992 with considerable background work and subsequent CDIE field trips to Colombia (Blair et al., 1993a) and Honduras (Hansen et al., 1993). In 1993, CDIE teams carried out field studies in the Philippines (Blair et al., 1993b), Sri Lanka (Hansen et al., 1993), and, the subject of this report, the Southern Cone of South America. The final step was to digest and distill from this effort an overall understanding of ROL development, which has now appeared as our CDIE evaluation synthesis, *Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs* (CDIE 1994).

The decision to study the ROL strategies in Argentina and Uruguay was made for a number of reasons. The two countries had recently adopted oral procedures in the national, civil court (Uruguay) and in the penal court (Argentina) systems, making these cases interesting as countries which, it appeared, were embarking on major structural reforms. Argentina and Uruguay were also chosen in order to broaden the sample for comparative purposes so that the

final set of case studies included an equal share of less developed countries (Honduras, the Philippines and Sri Lanka) and advanced developing countries (Colombia, Uruguay and Argentina). And last, there were logistical considerations as well. Inasmuch as both the Argentina and Uruguay ROL activities have been managed from USAID's office in Montevideo, Uruguay and given that the capital cities of the two countries are less than an hour's flight apart, it seemed feasible to assess the Agency's work in both countries in the course of a single field trip from Washington.

The five person team that conducted the field study consisted of the following members:

- Harry Blair (who served as team leader), a political scientist and a member of the sector working group on democracy at CDIE's Program and Operations Assessment Division, participated in earlier Colombia and Philippines studies;

- Mary Staples Said, a lawyer working with Development Associates, participated in all of the previous assessments (Colombia, Honduras, Philippines and Sri Lanka);

- Joseph Thome, a law professor at the University of Wisconsin has specialized in issues of land tenure and legal system development in Latin America;

- Richard Martin, a sociologist and USAID foreign service officer in CDIE's Program and Operations and Analysis Division;

- Christopher Sabatini, a political science Ph.D. candidate at the University of Virginia conducting dissertation research on parties and democratic consolidation in Argentina.

During the course of their one month stay, the team conducted over 100 interviews between the two countries. The team interviewed a wide spectrum of informants: individuals working in the judicial system--judges, clerks and lawyers, leaders and members of non-government organizations (NGOs) involved in the administration of justice or political participation--bar associations, business organizations, civic action groups, members of the media, government administrators, politicians, beneficiaries of legal aid programs, pollsters, and faculty members of local universities. The team also conducted five separate focus groups all of them with individuals who worked in various aspects of the judicial system: court administration personnel, judges, commercial and labor attorneys, and public defenders. And as always, primary and

secondary sources provided the essential background information and supporting material for the team's research. These included public opinion polls, diagnostic studies of the court system, internally generated court statistics, evaluation summaries and interviews for several of the activity studies, scholarly articles and books, and newspapers and magazines.

Attached as Appendix 1 is a complete list of the persons interviewed and their positions.

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I. INTRODUCTION

Political Histories: Two Different Peas from the Same Pod

To summarize the political histories of Argentina and Uruguay is not so much to compare as it is to contrast. In broad terms, over the last ten years, political events in Uruguay and Argentina have followed roughly parallel paths: insurgency in the 1970s, a military coup and in the early 1980s a transition back to democracy. But, in fact the two countries are a more a study of opposites, even within these events, than one of similarities.

The 1976 military coup in Uruguay ended one of most stable democracies in the region. Built around a generous, if somewhat bloated, welfare state and a tradition of cooperation and power sharing between the two major parties, the Blancos and Colorados, Uruguay was an island of political stability and social development in the region, termed appropriately Latin America's Switzerland. In the 1970s, however, consensus proved to have its limits, and Uruguay was to demonstrate that it was not immune to the revolutionary fervor sweeping the continent.

Rumors of state corruption and the political monopoly of the Colorado and Blanco parties led to a growing sense of political alienation and disaffection that spawned an urban insurgency group, the Tupamaros. Nervous over the growing subversion, civilian leaders in the government granted increasing powers to the military, until after several years, in 1976, a military coup was almost a fait accompli. What followed under the military government represented a dramatic and unfortunate break from the past, as the military routinely detained political suspects, deprived citizens of political and civilian rights, and in some instances tortured and "disappeared" detainees.

The country was restored to democracy in 1985, when after losing a plebiscite the military grudgingly agreed to step aside and permit the election of a civilian president. Since that time, Uruguay has returned to its pre-coup tranquility. Uruguayans have now regained full civil and political liberties; political prisoners have been released; and the media is free and active. The larger questions that now face the civilian government are how to restart the country's stalled economy and, correspondingly, how to restructure the unwieldy public sector that has swelled over the years.

As almost every informant in our trip asserted, Uruguay's judicial system has been remarkably free of corruption and politicization, even during the years of military government. The greatest reason for this is the high degree of professionalism of the judges and judicial personnel, despite low pay. (For judges the judiciary

track is a career where promotions are based on merit.) Size of the country has also been an inhibiting factor on judicial corruption; until recently there was only one law school in the country. But perhaps more important, this legacy has tended to reinforce itself over time. Citizens and the media *expect* the judicial system and its employees to be honest, and serve vigil to report cases of corruption. Even efforts by the military to interfere with the judiciary were met with firm resistance by the members of the judicial branch.

For virtually every characteristic of the Uruguayan political system described above, Argentina demonstrates the near opposite. Where Uruguay was recognized as a bastion of democratic stability until the 1970s, Argentina has endured an almost predictable cycle of unstable democracies and military coups since 1930 (from that time until 1983, 6 elected governments fell to the armed forces). Where cooperation between the two main parties has marked the political life of Uruguay, extreme praetorian conflict--to use Huntington's term (1968)--between the two main parties (the Radicals and the Peronists), at times in collusion with the military, have undermined past attempts to establish a stable political order. And where the Uruguayan judicial system is known and respected for its integrity and independence, the Argentine judicial branch has been stained by its politicization and subservience to the executive branch.

The democratic transition in 1983 came after an exceptionally brutal and perverse six years of military government in which according to some accounts over 9,000 people were "disappeared." The experience of the military government increased popular anticipation for a democratic regime, and to a degree cooled the intense political passions that before had destabilized the country. Nevertheless, the country still bore the scars of its decades-long political instability. Independent civil society remained highly politicized and, until several years later, overshadowed, both organizationally and culturally, by the corporatist business associations and workers unions. By 1983, the country's economy was also in the midst of an unprecedented crisis with the gross domestic product stagnating at its 1970 level, foreign debt looming at close to $46 billion dollars (nearly 80% of GDP), and inflation nearing 400%.

Argentina's economic woes have dominated politics since the transition to democracy. After 1985, persistent battles with hyperinflation at times reaching 5,000% sent the economy and the political system into a tailspin. Unable to control the economic crisis by the end of his term, Argentina's first elected president in over 6 years, Raúl Alfonsín, was forced to step down six months early in order to permit the newly elected Peronist President, Carlos Menem, to assume control of the economy. Once in power,

Menem embarked on a dramatic policy of dismantling state intervention in the economy and holding down inflation. While the plan has produced noticeable effects, not the least of which is the lowering of inflation, it has also come with a political cost. Most government legislation is now issued directly by executive decree, effectively bypassing the Congress; and when confronted with Supreme Court opposition, the Menem administration expanded the court from 5 to 9 justices and packed it with political allies.

The Menem administration's tampering with the judicial system is not without precedent. In the Argentine federal court system, all appointments to federal benches are made by the executive power with only a perfunctory approval process in the Senate. In Argentina's politically charged environment, presidents have often used this authority to appoint political favorites to judicial posts, thereby extending their political power over the judiciary and weakening political adversaries.

Nevertheless, when the military handed power over to Alfonsín in 1983, public attention was intensely focused on the judiciary. Alfonsín had made one of the centerpieces of his campaign the need to try military officers for the abuses committed while in power. In this process, the judicial power figured prominently into punishing human rights offenders. The trials were conducted under oral proceedings and televised nationally.

In the face of military mutinies and coup threats, the hearings were eventually halted, and shortly after reaching power, President Menem granted amnesty to the officers who had been convicted. Notwithstanding the military's resistance and the reversal of the convictions, the trials marked a new found faith in democratic institutions and a desire to reassert state institutions in order to protect the rule of law and punish offenders. In spite of recent backsliding, the process also opened up a critical reexamination in the public of the effectiveness and duties of the national judicial system in a democracy. While the conclusions have not always been positive, it does represent a new trend in Argentine politics: one of attempting to fine tune and improve the country's state institutions. It was in this context that USAID began its work in Argentina.

The Entry of USAID, Its Rule of Law Programs and Other Donors

When USAID first opened an office in Montevideo the intent was to work primarily in Uruguay, but with increasing cooperation from the Menem government in meeting Argentine debt obligations, operations were extended in 1989 to Argentina. In both of the countries, assistance in the administration of justice program has represented

a large share of USAID's focus, complementing the efforts by the new democratic governments to strengthen the rule of law.

In both Uruguay and Argentina, USAID entrance followed on the heels of major structural reforms in the judicial system. Shortly before USAID arrived, the Uruguayan Congress had passed a law changing the entire civil court system from written to oral procedures. In order to ease the transition to oral procedures the government had also added 100 new judges to the court system, which in a country as small as Uruguay effectively increased the number of judges by one third. In Argentina by 1989, congress had approved a new code establishing oral procedures in the penal courts, and the government had approved a new law for funding the federal courts, promising the federal justice system 3% of the national budget.

Previous to USAID's arrival, the United States Information Service (USIS) had funded a series of visitor exchange programs in the area of Administration of Justice (AOJ). USIS assisted in the travel of a number of Argentine and Uruguayan judicial officials to the United States and has funded the travel of a number of U.S. individuals working in areas such as mediation and court administration to Argentina. By all accounts these trips have been essential to introducing new ideas to the Uruguayan and Argentine judicial sector, particularly since in the case of Argentina, outside speakers are not prone to the suspicion of personal or political aggrandizement. Many of these trips have helped to lay the groundwork for later ROL reforms and projects.

For the moment, bureaucratic difficulties have prevented the pooling of USAID and USIS funds for AOJ trips, but in both Argentina and Uruguay the two agencies have coordinated their programs and often work with the same individuals in the U.S. and in the host countries. While the CDIE team was in Argentina, a USIS funded visitor from the Alternative Dispute Resolution Center at the Supreme Court of Virginia spoke to a meeting of the Argentine Bar Association. The speech coincided with the initiation of a Ministry of Justice pilot project (with USAID support) on mediation in the Federal Courts, and the bulk of the speaker's message was devoted to assuaging attorney's fears of mediation.

Unarguably, one major accomplishment of USAID's involvement in ROL in the Southern Cone has been in generating support within the donor community on the topic of legal system reform. In Uruguay, USAID has served as a trailblazer for the involvement of the United Nations Development Program (UNDP) and the Inter-American Development Bank (IDB) in ROL activities. The flexibility of USAID's comparatively smaller grant program and its policy dialogue with the host government have allowed USAID to test and strengthen political will and build constituencies within the judicial sectors

that later permitted government to government lenders, such as the IDB in Uruguay and quite likely the World Bank in Argentina, to then step in with greater confidence.

For the UNDP, an agreement between USAID and the local UNDP mission in Uruguay has increased the effectiveness of the individual programs. USAID channels the bulk of its funding for ROL programs through the organization's mission in country, with the UNDP adding its own funds to the activities and providing many of the administrative duties of the projects. Involvement of the UNDP in the judicial sector is a relatively new area for the organization, and its cooperation with USAID may be unprecedented. Each of these groups brings advantages to the relationship. USAID additional funds and its relationship with the government of Uruguay (GOU) have given greater leverage to the ROL projects. As a multi-lateral donor, the UNDP serves as a neutral actor in a potentially sensitive area of work for the U.S. government's USAID mission.

Because of USAID's early efforts in ROL, the IDB has begun work to support legal and regulatory reform. Under a $600,000 loan from the IDB, courses in alternative dispute resolution, labor law, and commercial law will soon be taught in the *Centro de Estudios Judiciales* (CEJU), a USAID-supported judicial school. (See below under Legal System Strengthening for greater detail about CEJU). IDB funds will also be used for the adoption of a code of ethics in the judicial system and the purchase of multitrack recorders for oral procedures.

In Argentina, external donors have been slower in responding. Initially, like its program in Uruguay, USAID provided funding through the local UNDP office, however, the creation of a local NGO involved in legal system issues proved a more effective mechanism for the management of ROL programs. Within the last year, the World Bank, with partial funding from the Argentine Ministry of Justice (about $129,000), initiated an extensive diagnostic study of the Argentine judicial sector, including a review of court procedures and practices, procedural codes, alternative dispute resolution methods, and the level of training for court personnel. Conclusions of the report will be used to design a joint World Bank/Government of Argentina (GOA) program in the judicial sector. With USAID's planned phase-out from Argentina over the next year, the World Bank has expressed some interest in picking up the funding for several of the mission's current activities under the programs recommended in the diagnostic study.

Key Problems in the Uruguayan and Argentine Judicial Systems

With varying differences, the following are the major problems confronting the judicial systems in Argentina and Uruguay:

- **Court Delays:** According to a USAID-funded report (Gregorio, 1990), in Argentina cases in all Federal Commercial and Civil courts of first instance take on average almost three and a half years to reach completion; Criminal Federal Courts and Labor courts over two years. Although no comparable statistics were available for Uruguay, most data would seem to indicate the delays in most Uruguayan courts approach over one year. Inefficient administration within the courts, antiquated procedures, overburdened judges, and increasing case loads are cited as the primary reasons.

- **Legal Access:** In both countries, public misperceptions or lack of knowledge about the legal system abound. A large percentage of the people view the justice system as distant and an instrument only for the advantaged. The lack of public defenders also presents a problem in Argentina, where according to one study there is only one public defender per 100,000 citizens; in Uruguay the same statistic is one per 17,000 citizens (FORES, 1993).

- **Corruption:** As noted above, corruption is not an issue in Uruguay. However, in Argentina corruption or the perception of a corrupt judiciary has seriously weakened the public trust of the justice system. According to most objective sources, corruption of judges in Argentina is relatively low, although on the increase. Nevertheless, a Gallup poll found that 66% of the public *believed* that judges were corrupt (Gallup, 1992). Delays in the processing of court cases contribute to the perception of corruption in the system.

- **Politicization:** Again, not a problem in Uruguay, but in Argentina this has presented itself as a issue of immense proportions. Executive dominance of the judicial branch has created a sense of cynicism in the public towards the Judicial Branch and has held up the implementation of structural and administrative reforms in the Federal Court system.

- **Legal Impediments to Business:** Years of heavily regulated and protected markets in both countries have left a difficult legal and judicial legacy for private investors. In Uruguay, lack of knowledge of commercial law by judges, current labor laws, and a perceived tendency by the judges to personally rule against private enterprise are the reasons that a recent IDB report listed the justice system as one of the five main elements discouraging investment. In Argentina, delays in commercial cases, current labor laws, and the lack of

legal predictability are the primary concerns of the private sector interests. Recent concerns over the country's judicial system have led Argentines to coin the term *inseguridad juridica* to capture the lack of predictability and integrity for the judicial system that presently exists.

- **Low Public Trust of the Judicial Sector:** Public approval of the justice system in Uruguay was recorded at 28% in 1989 by a Gallup Poll. The percentage of the Argentine public that has a positive perception of the justice system has fallen from 57% in 1984 to 17% in 1993.

Analytical Framework

The analysis of the series of USAID ROL activities in Uruguay and Argentina is structured around an analytical framework that has evolved from the six country assessments conducted by CDIE and developed in full detail in final synthesis report, *Weighing in on the Scales of Justice*. The formula divides ROL activities into four related categories according to the intended focus of the activities. What follows is a brief description of each of these areas in their analytical sequence.[1]

Constituency/Coalition Building comprises a series of activities intended to mobilize elite and/or, if necessary, public support for legal and judicial reform. Several distinctions should be made here. First, often elite support may not be immediately forthcoming before a ROL activity is undertaken; pro-reform elites may be dispersed or locked out of power by those who oppose reform. In these cases, the next step is to build public attention and demand over the issues of legal system reform and by doing so force the elites to address the obstacles to an efficient and fair judicial system. Second, we need to draw a distinction between political elites and judicial elites. Simply generating a consensus towards change in the former may not be enough to institutionalize significant reform measures within a judicial system which often comprises a separate set of actors with different organizational interests and incentives. Nor does the will to change within the justice system guarantee that political elites will respond to these demands. In sum, the successful initiation and consolidation of a judicial reforms is dependent on sustained political will in both sectors of the host government.

[1] Again, for a fuller explanation of these categories and their steps, we refer the reader to the synthesis report.

Structural Reform refers to changes in the basic rules governing the judicial system, which are usually embodied in constitutional and legislative provisions. These rules often define the autonomy of the judicial branch and the ways in which the judicial sector conducts its business. Reforms in these areas are primarily the work of host governments rather than external donors. The only exception to this is the adoption of Alternative Dispute Resolution (ADR) mechanisms by the courts where in Uruguay and Argentina USAID and USIS sponsored visitors trips were instrumental in generating interest and initiating ADR programs in the courts. (Because many of these efforts have overlapped with Access Creation strategies below, they will be discussed with Access Creation activities.)

Access Creation strategies concern the programs, organizations and mechanisms which grant disputants greater access to the legal system. Access creation activities extend beyond programs that target the needs of poor or marginalized sectors of society through such activities as legal aid programs, legal literacy campaigns and paralegal services. The strategy can also include efforts to provide more timely decisions for commercial litigants. In these cases, establishing a system of ADR in the area of commercial law may help to provide quicker and better access to justice, and thereby improve the legal climate for private sector businesses.

Legal System Strengthening encompasses all of the myriad of activities intended to enhance the institutional capacities of the judicial system. These activities include programs in court administration (systems to improve budgeting, management, personnel, and procurement; modernization of filing systems, and case tracking systems), training for judges and court personnel, information sharing between courts, and reforms in law school curricula.

USAID ROL Activities in Argentina and Uruguay

It is important to note that in both countries the amount provided by the mission to the individual recipients has been relatively small, never above $90,000 for one activity in a year and in some cases as little as $25,000. The stories of the successes achieved by the programs seems to be in the targets of opportunity that were present in each country and the willingness of the mission to shift its emphasis--particularly in Argentina--to new areas when initial attempts failed to produce the desired results.
Although in both countries there was a very clear strategy to USAID's work in the judicial sector, conducting the program through a series of related grants meant that there was no coherent project in place in either country. Without the restraints of a project, the mission and project managers were more flexible in redirecting

money to new areas or increasing support for a particularly successful activity.

Because of this the two countries offered fitting case studies of the strategies outlined in the analytical framework above. In Uruguay, since the judiciary had initiated a major series of structural reforms in the courts and there was general consensus among political and judicial elites over the desirability of reform, the USAID mission was able to concentrate its resources on the supply-side end of the framework. In Argentina, on the other hand, early efforts with the Supreme Court of the Nation (SCN) to create a judicial school and reform judicial administration, became stalled in the internal political and personal bickering among the court justices. The mission responded on two tracks. First, USAID stepped up its efforts on the demand side, working with a series of local NGOs in an attempt to generate greater public pressure on the political and judicial elite to address judicial reform. Second, USAID shifted the resources and activities previously devoted to the SCN to the Supreme Court of the Province of Buenos Aires (SCPBA), where there did exist a consensus for change within the court.

Since the amount of funds previously provided by USAID to the SCN was insufficient to serve as either a carrot or a stick that could prod the national government to action, the change was intended more to pressure the SCN into action by force of example and attendant publicity than by offering concrete incentives. At the same time seriously reforming the judicial system in the Buenos Aires Province promised a significant impact on the country's population and its judicial system. The province of Buenos Aires contains roughly 10 million inhabitants (almost one third of the total population) and surrounds the federal capital of the nation that bears the same name. Because of the province's population and its proximity to the Federal Capital, the provincial justice (and political) system is closely linked to the national government in the Federal Capital. For example, Cavagna Martínez, one of the National Supreme Court Justices had been a sitting Justice in the Province of Buenos Aires Supreme Court (SCPBA) when the bench decided to begin reforming the judiciary.[2]

In Argentina, with the exception of funds to *Poder Ciudadano* and *Conciencia*, most of the grants are funneled through a local NGO, *Fundación la Ley* (FLL) which administers and manages the separate activities. *Poder Ciudadano* and *Conciencia* fall under USAID's participation project. However, the themes that each of these

[2] Martínez was one of the Supreme Court Justices forced to resign in December 1993 after President Menem and ex-President Raúl Alfonsín signed a constitutional reform pact (see below).

cover (*Conciencia* and civic participation and *Poder Ciudadano* and corruption) bear at least indirectly on the judicial sector. The mission has encouraged joint projects among these groups and recipients working on ROL.

What follows is a brief description of each activity divided in the strategies explained above. Later chapters will follow this order.

Constituency/Coalition Building: In recent years, this area has represented a large portion of USAID's strategy in Argentina. The mission has provided small grants to a number of organizations intended to build a popular concern in their particular area of interest or to collaborate with the government in a given area, such as ADR or training. For this reason, several of these groups reappear under the other sections discussed below.

***Fundación la Ley* (FLL):** Formed as a non-profit organization by *La Ley*, a legal publishing house in Buenos Aires, FLL has substantial contacts in the legal system. While its role has been predominantly to administer USAID grants, FLL is in charge of its own separate project to form a National Center of Provincial Courts (CEJURA) that will promote the exchange of information among the courts.

FORES: A local NGO involved in issues concerning public defenders, including the training of defenders, working with the Ministry of Justice to redesign the Office of Public Defenders, and more recently conducting a series of workshops in the Province of Buenos Aires for public defenders and social workers.

***Fundación Libra*:** This is an association of lawyers who are attempting to promote the adoption of Alternative Dispute Resolution in the Argentine courts. Some of their activities have included the training of mediators, public awareness programs on the issue of ADR, and a training seminar for judges in the Province of Buenos Aires on mediation. Not all of this activity has been funded by USAID

***Fundación para la Modernización del Estado* (FME):** An association of 80 private businesses that were instrumental in pressing President Menem to trim the public bureaucracy. FME and Arthur Anderson recently conducted an administrative management study of the Supreme Court. USAID funded the study.

***Poder Ciudadano*:** Part of USAID's Participation Project, this NGO's primary foci are corruption, civic empowerment, and accountability. *Poder Ciudadano* works extensively with

the media to generate public interest in the issue of corruption and targets younger generation Argentines through the schools and popular media to convey its message of civic participation and government integrity.

Conciencia: Again, a part of USAID's Participation Project, this NGO stresses civic participation and education, the end goal of which is to create a more responsible citizenry and responsive government. *Conciencia* has also provided technical assistance to the Supreme Court of the Province of Buenos Aires for a program of legal literacy and civic education on the judicial system.

Structural Reform: Argentine reforms toward oral procedures in the Federal Penal Court system, the creation of a judicial screening committee, and the passage of a new budget code for the justice branch occurred before USAID established a program in the country. The only area where USAID has been active in the area of structural reform has been in ADR and mediation.

- USAID provided funds to the Ministry of Justice to begin two pilot projects in mediation and ADR. One of these projects was the creation of four legal aid/mediation centers (see also Access Creation). The other was to begin an experimental ADR system within the current judicial system where 10 courts could send their cases on a voluntary basis for mediation.

- With A.I.D support, the SCPBA is beginning to explore the integration of ADR techniques in the provincial court system. One of the first activities was a series of workshops conducted with *Fundación Libra*, discussed above.

Access Creation: A number of activities within this area have overlapped with those in Constituency/Coalition Building. In several cases individual NGO's were responsible for lobbying the government for a change and, once the change was in place, played a part in implementing the reform.

Pilot Legal Aid/Mediation Centers: Funded jointly by USAID and the Argentine Ministry of Justice, USAID funds have provided the seed money for the creation of the five pilot legal aid/mediation centers.

Expansion of ADR: A USAID/Ministry of Justice (MOJ) ADR program has been launched which is intended to help unclog the courts and provide more timely access to justice.

Training of Public Defenders and Groups Involved in Legal Aid: This work has been undertaken primarily by FORES with assistance from USAID Its activities have included training programs for public defenders in the capital and in the provinces and a series of workshops in the Province of Buenos Aires among provincial public defenders and social and legal aid workers.

Legal System Strengthening: USAID's activities at the national level have been somewhat limited given the recent logjam in the Supreme Court of the Nation.

Judicial School: USAID has provided a series of grants to the Supreme Court of the Nation in order to establish a school for training judges and court personnel.

Court Studies: USAID has helped fund three separate studies on federal judicial administration and court delays: the Schvarstein Report, the Gregorio Report and the FME/Arthur Anderson mentioned above. (Schvarstein, 1992; Gregorio, 1993; FME/AA, 1994)

***El Centro de Estudios Judiciales de la República Argentina* (CEJURA):** Still in the process of developing, CEJURA will be a National Center for Provincial Courts under the management of USAID supported FLL.

Administration of Justice (SCPBA): This has included a number of partially USAID supported activities including seminars and a pilot project on the decentralization of management and budget, the automation of court receivers, and the creation of a central data base for case decisions.

In Uruguay, the relatively stable and broad consensus for change among sectors of the political and judicial elites has permitted USAID to concentrate its efforts on improving and bolstering many of the reforms initiated from within the judiciary. The following is a synopsis of USAID activities in Uruguay that will be analyzed below.

Constituency/Coalition Building: Because of the high degree of consensus within the court to pursue reforms, this strategy was not

considered a high priority by the USAID mission under their ROL program.

Centro de Estudios de la Realidad Económica y Social (CERES): CERES is a think tank supported by the private sector, USAID and other donors that conducts and disseminates research on obstacles to private sector growth, such as existing commercial and labor laws.

Structural Reform: The adoption of oral procedures in civil courts and the expansion of the number of judges occurred before USAID began its program in Uruguay. The one area where USAID has been active, however, in this area is in ADR.

ADR: With USAID funds a local NGO has begun to offer mediation classes to judges and attorneys.

Access Creation: Access creation in Uruguay concentrated more on improving the legal climate in commercial law.

ADR: One of the major purposes of the ADR courses is to integrate mediation into the courts as a way to help improve the commercial sector's access to justice.

Legal System Strengthening: Initiation of the structural reforms described above opened up a very broad field for USAID involvement in this area.

Training: USAID supported judicial school, *Centro de Estudios Jurídicos de Uruguay* (CEJU) has trained judges, attorneys, and court clerks in areas such as oral procedures, commercial law, and court administration.

Administrative Reform: USAID has helped to fund the creation of an office of Administrative Services in the Supreme Court, which has concentrated on: the reduction of the administrative workload of the courts; the consolidation of planning and budgeting; the development of a system of judicial statistics; and the development of a management information system.

Since the above list constitutes an unwieldy mix of activities, the analysis and discussion that follow do not attempt to evaluate and discuss each one separately. Rather, the intent will be to provide an overall picture of the dynamics and processes at work within these general categories that have contributed to their impact on improving the climate for reform of the legal system.

II. CONSTITUENCY/COALITION BUILDING

After experiencing difficulty in working with the Supreme Court of the Nation in Argentina, USAID turned its efforts to supporting a wide range of activities with NGOs as a means of building a popular constituency for reform.

In Uruguay, this area is interesting not so much for USAID's work with NGOs, but instead for the degree to which external pressure was responsible for the decision by political and judicial elites to push through oral procedural reform and the extent to which this will continue.

Sources of public pressure for judicial reform can be divided roughly into three categories: NGOs, media and public opinion, and the commercial sector. The sections that follows will discuss each one, examining the effectiveness of these private spheres to build elite consensus for change inside of the state.

NGOs and Judicial Reform: Pressuring and, in some cases, Assisting the State Implement Change

Since Argentina will take up much of the discussion under this subject, it makes sense first to address the case of Uruguay. As mentioned above, because of the apparent elite consensus for change in Uruguay, USAID has devoted its resources to advancing and institutionalizing the reforms initiated in 1988. However, recent events point to a potential danger in relying strictly on political will at the top to effect change. While within the courts reform projects have progressed impressively, there are some indications of the limits to the current strategic focus.

When the Uruguayan Parliament initially passed the law converting civil courts to oral procedures, the intention was to eventually extend the conversion to penal courts as well. But in spite of the apparent success of oral procedures in the civil courts, the current Penal Reform legislation has remained lodged in the Parliament, its future still uncertain.

Passage of the initial reform legislation for the civil courts required political lobbying and an extensive publicity campaign by the proponents for reform (primarily a handful of judges and legal scholars). It was an instance where the consensus for change came from the top down--and more specifically from judicial elites.

Part of the difficulty with the current bill is a lack of consensus among the members of the Reform Commission over the details of the law. Without the unified pressure of judicial elites for the

reform, it appears there is little outside pressure to ensure a sufficient majority among political leadership--particularly in the Parliament--to approve the measure. Neither political elites nor the public appear to have the will or interest to take the issue on themselves. As a result, further procedural reform appears for the moment to have stalled.

There also were voiced several concerns about the monopolization by the Supreme Court of the USAID supported judicial school, CEJU.[3] Complaints were raised that the present CEJU management board controls too tightly the content of the courses, the entry of participants and the selection of the teachers. Such restrictions risk that the school will become a sort of indoctrination program for judicial participants, thereby distancing the school and its graduates from the rest of society. Widening the management of judicial schools to include more groups in civil society (such as bar associations, legal aid groups, etc.), would avoid the charge of institutional isolation as well as facilitate greater cooperation among actors in the legal sector.

In sum, concentrating strictly on the supply-side strategies and passing over demand-side opportunities risks that the reforming elites will be able to monopolize the operation and details of reform. Internal consensus for change can break down or may have its limits, since elites may conceivably reach a point where further reform damages their own interests. Over the long term, relying on internally generated change, without the external pressure to move it along, may threaten the depth and breadth of judicial reforms, as well as public perception of its effectiveness.

Now we turn to Argentina. Without sufficient will or coherence at the top of the Federal Judicial System nor in political circles to seriously address reform, it became necessary to build popular demands for judicial change. USAID's strategy in this area was assisted by the large number of legal NGOs that were already in existence by 1989. Most of this growth had occurred after the transition to democracy, where earlier military repression and state-led corporatism had hampered the emergence of independent social groups pre-1983. While Argentine civil society is still

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[3] Currently, the CEJU governing board is composed of two members of the National University Law School of Uruguay (the only law school in Uruguay), two representatives from the court system, and two individuals from the Legal Section of the Ministry of Education and Culture. It is planned that CEJU management will eventually pass to Supreme Court, increasing several respondents fears that the school will become too closed.

relatively weak by developed country standards, compared to most lesser-developed countries, by 1989 Argentina offered a number of highly capable and professional NGOs who were active in ROL issues.

Scholarly comparative studies have concluded that high rates of literacy, a large middle class, and a diversity in the country's productive patterns (in short, socioeconomic development), contribute to a rich and vibrant civil society.[4] This is the case in Argentina as well. The felicitous convergence of a largely literate population, a substantial middle class, and a developed and active civil society have provided USAID with a strong base from which to begin its strategy of building popular demand for change.

Nevertheless, the highly divisive atmosphere of Argentine politics threatens to weaken the effectiveness of donors' work through NGOs. Unarguably, the capacity of civil society to pressure the state is improved when there is a broad front of groups and leaders that are lobbying for a given issue. In Argentina, however, civil groups are still the targets of suspicion for being the personal vehicles of ambitious individuals or thinly disguised partisan fronts. As a result, many of the NGOs which USAID supports are uncomfortable with their fellow recipients and government actors also demonstrate genuine discomfort with what they considered to be the affiliation of certain groups. This divisiveness within the NGO community and the distrust between state and civil society has limited the potential impact of NGO sponsored activities.

Several USAID-funded NGOs attempted to engage the state in a narrow set of activities as a means to improve the administration of justice. These NGO's pursued a strategy of increasing public awareness of a problem and jointly lobbying the government in order to generate state interest in a particular issue. Once in place, the same groups worked with the government to help institute the desired change.

One of the clearest examples of such a tactic was that of the *Fundación Libra* which worked as an advocate for the use ADR in the Argentine court system. In a program of public education, *Fundación Libra* attempted to generate public interest in ADR and personally lobbied political parties, legislators, and judges on the issue of mediation. Since most of the foundation's leaders are also law professors and lawyers, *Libra* members have introduced the concept of mediation in different law schools and conducted seminars and workshops for judges and professional associations--groups which our interviews confirmed often oppose the adoption of

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[4] See for example: Diamond, Linz and Lipset (1987); Rueshemeyer, Stephens and Stephens (1992); and Huntington (1991).

ADR in the courts. The intent of the workshops was to explain to participants what ADR meant and what their roles would be in a system of mediation.

The process has recently begun to bear fruit. When the Ministry of Justice moved to establish a series of four pilot legal aid/mediation centers the ministry collaborated with *Libra* in the training of the centers' mediators. Further, under the SCPBA grant, *Libra* has also begun a series of seminars for provincial judges on how to integrate mediation into the court system.

The experiences of another USAID assisted NGO, however, demonstrate the potential pitfalls of such a tactic.[5] In 1991, after conducting a series of training seminars for public defenders throughout Argentina, FORES collaborated with the Ministry of Justice for the establishment of a commission, comprised of FORES trainees, to improve the administration of the state public defenders office. Several of the committee's projects were adopted, such as greater office coordination and increased resources. However, a change in the administration effectively shut down the project and prevented the implementation of many of its key components. As a result, the committee's reform project will have to wait until a more favorable minister assumes office.

Several other USAID supported NGOs have adopted a strategy of mobilizing popular participation as a means to enforce accountability of political elites. One NGO, *Conciencia*, has actively pursued a series of programs in civic education designed to increase citizen participation and civic awareness. Activities such as voter education programs and multi-sectoral partnerships between citizens, business and government to address the deliver of public goods are intended to perform a double function: to educate citizens through participating in the democracy and, by doing so, to encourage greater state accountability.

Another USAID supported NGO concentrates more narrowly on the issue of corruption. Formed as a civic action group, *Poder Ciudadano* focuses primarily on increasing public attention on the effects of corruption and educating citizens on what they can do to combat it. The methods it applies to accomplish this center around forums, public education campaigns and the media.

The most important vehicle for *Poder Ciudadano's* work is the media. In just three months, from September 1992 to November 1992, *Poder Ciudadano* representatives appeared in 500 minutes of television,

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[5] Although FORES objectives have centered around the training of public defenders, its advocacy role on behalf of public defense seems to qualify it more, in this case, as demand oriented NGO.

300 minutes of radio programs, staff from the organization had 200 interviews with journalists and 60 articles were published in which *Poder Ciudadano's* work was cited.[6] (USAID, 1993a) In addition, *Poder Ciudadano* publishes its own monthly newsmagazine and according to several interviews with journalists, newspapers often contact *Poder Ciudadano* for information.

Over the last four years public concern over corruption has increased. In a poll conducted in 1989 only 11.1% of the respondents listed corruption as the leading problem facing the country, behind the economic crisis (36.2%), inflation (30.3%) and living conditions (14.9%).[7] That percentage increased to 16% by 1993, placing corruption and education as the most popular answer among the respondents over the leading problem facing the country.[8]

A note of caution, however, needs to be injected here. In 1989, the country's economic crisis was in full steam. (Only three months after the 1989 poll was taken Alfonsín would be forced to step down early when riots broke out over the economic collapse.) By 1993, the date of the second poll, the economic crisis seemed to be under control: inflation was being held below the 20% mark and the country had registered +8% growth for the previous year. (In fact in the 1993 poll, only 1% of the respondents listed inflation as an urgent problem.) Consequently, the increased public attention that corruption has received can be explained not so much as a dramatic change in the people's awareness of corruption, but the decline of other less pressing issues.

Perhaps most important, in the most recent 1992 poll 54% of the respondents believe that something can be done to fight corruption, indicating that the majority of citizens do not feel powerless to correct corruption. Even more striking is that the majority of those polled, 66%, believed that the primary solution lies with an improved justice system. Respondents' second most popular answer,

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[6] The organization's director, Luis Moreno Ocampo, has had a public career in the justice system, most notably as the primary prosecutor in the military trials after the democratic transition. His recently published book on methods to control corruption, appropriately titled *En Defensa Propia: Cómo Salir de la Corrupción*, recently sold over 200,000 copies.

[7] Nationwide poll conducted by SOFRES-IBOPE, Buenos Aires, April 1989, "Crisis Económica, Alineameintos Partidarios y Tendencias Electorales" (margin of error: +/- 1.7%)

[8] Poll of Greater Buenos Aires residents, conducted by Instituto Gallup de la Argentina for Poder Ciudadano, Buenos Aires, "Estudio Sobre Corrupción" (margin of error: +/- 3.5%).

a "strong hand" is somewhat ambiguous: it could either encompass people's belief in a strong judicial system or, more troubling, the need for a more draconian, authoritarian response. Also noteworthy is the fourth answer with 17% of those polled: greater citizen participation and control. Identification of civic empowerment as a solution to corruption could be interpreted as a reflection of the pioneering work of NGOs such as *Poder Ciudadano* and *Conciencia*. These results are laid out in table 1.

Table 1

Question: What do you believe are the most effective solutions to resolve the problem of corruption

Answer	First Answer	Second Answer	Total (1+2)
Increased efficiency in justice/application of law and in sentencing	43%	23%	66%
A strong hand/punish examples/increase penalties	14%	14%	28%
Have honest politicians who give an example	12%	21%	33%
Improve sense of ethics in the population	12%	17%	29%
Encourage the participation of citizens to observe and control the cases of corruption	12%	5%	17%
More media attention on corruption	3%	9%	12%
Each sector should create its methods of control	3%	6%	9%

Base equals 950 respondents in Greater Buenos Aires

Nevertheless, in spite of the work of *Poder Ciudadano* and *Conciencia* in the media, public name recognition of these groups is still very low. Of those asked in the 1992 Gallup poll, only 8 percent answered that they knew of a group or individual that was working in the area of corruption. Of that 8%, 14% of them identified *Poder Ciudadano* as an organization that was actively involved in fighting corruption, placing the NGO second on the list; Luis Moreno Ocampo *Poder Ciudadano's* head, placed third with 13%; and *Conciencia* was sixth, named by 5% of the respondents.[9] (The question was open ended.) In total, this indicates that slightly over 1% of the people can name *Poder Ciudadano* and under

[9] Poll of Greater Buenos Aires residents, conducted by Instituto Gallup de la Argentina for Poder Ciudadano, Buenos Aires, "Estudio Sobre Corrupción" (margin of error: +/- 3.5%).

one percent can identify *Conciencia*.

When the answers were broken down according to education and socioeconomic status, they revealed that only a slightly higher percentage of the more educated, professional and younger respondents identified *Poder Ciudadano*. Two percent of the total sample of those polled between 25-34 and university students and 2.7% of the businessmen and professionals polled recognized *Poder Ciudadano*. Correspondingly, these are also the groups that were more likely cite "civic participation" as a means to control corruption. These are also the groups targeted by *Poder Ciudadano* and *Conciencia*.

In sum, it would seem that perhaps there has been some influence by these groups on the public perception of corruption and possible solutions to it. But the impact of this activity at the moment--at least as measured in name recognition--appears to be relatively limited. Moreover, without longitudinal data it is difficult to measure the possible influence of these groups on public attitudes (apart from name recognition) and to distinguish their influence in raising public concern over corruption from the decline in other factors.

Other USAID supported NGOs have also used the media as a vehicle to place pressure on the state. The recent FME/Arthur Anderson study on Supreme Court administration published the results of its report in several of the nation's leading newspapers. Revelation of the study's conclusions were intended, in the words of the study's manager, to shock and embarrass the Supreme Court into action. Whether they produced the intended effect within the court is difficult to assess at this point. In any event, one of the CDIE team members who stayed in Argentina noted that the findings were repeated by at least one newspaper, *La Nación*, several months later when a pact between ex-President Alfonsín and President Menem to reform the court surfaced.

This leaves the question of whether the media and public opinion are effective pressures for change. We can conclude that the work of NGOs such as *Poder Ciudadano* and FME have an impact on what the media covers, and, with some reservations, the 1993 Gallup polls indicate that this coverage affects public opinion. But the link between these variables and changes in elite behavior or in the emergence of an elite coalition for change is still murky. In order to answer this issue we turn to a fuller discussion of the role of the media and public opinion in Argentina and Uruguay.

The Media, Public Opinion, and Elite Behavior: A Paper Triangle

In both Argentina and Uruguay, the media have emerged as a strong and active voice in the countries' political life. Both countries are regarded as the most literate in Latin America (94.8% and 95.3% respectively), and this level of education supports a wide spectrum of newspapers, television and radio stations and magazines. There are over 25 radio stations in Montevideo, four t.v. stations--two of them state owned--and four major daily newspapers. In Argentina, electronic media--radio and television--were recently deregulated, and since 1989 the Menem administration has privatized state-owned radio and television stations leading to a proliferation of cable and radio stations. Argentina has over 15 daily newspapers in Greater Buenos Aires alone, and nearly every province distributes at least one local newspaper. Newspapers and weeklies in both countries are often associated with political parties or a particular ideological line, but are not directly controlled by the state.

State threats to hold back advertising to newspapers that criticize the government--a form of indirect manipulation of the press in Sri Lank and the Philippines--is not a serious concern in Argentina. Larger newspapers typically have a wide enough readership and enough private advertisers that they do not have to rely on the state. In most cases there is a kind of reverse dependence: distribution is typically large enough for the more popular dailies that the state needs their networks for advertising and therefore cannot terminate a contract.

Shortly before the team arrived in Argentina and before the congressional elections, a reporter for one of the more vocal newspapers, *Página 12*, was beaten for apparently criticizing the government. While this was the first case of publicized physical violence against the press, intimidation of reporters has occurred fairly regularly since 1983, often times in the form of harassing or threatening phone calls delivered late in the night. According to interviews with several journalists, however, occurrences such as these are probably not state sponsored, but rather the work of some of the more unsavory elements who support the parties but are not associated with the government.[10]

In the case of the *Página 12* reporter, President Menem had agitated political supporters by painting the media as the government opposition. The choice he said was between the government or the press. Apparently, several Peronist supporters took this as a cue to physically punish the press. After the

[10] This was confirmed with separate interviews with a three journalists.

incident Menem gave only a weak apology for the event and warned that this was one of the risks of being a reporter. Thus, while the state was not directly involved in sanctioning the beating, it would appear that Argentine political actors have still not fully accepted the implications of a free media.

It has been the media's aggressiveness in relentlessly pursuing and reproving political leaders that has sparked such nervousness among political leaders. These minor instances of harassment have done little to curtail the vigor of the press in criticizing the government and covering reports of corruption, malfeasance and even the peccadillos of politicians--often with apparent glee.[11]

Recently, the press has turned its hungry attention to the judiciary. Stories of government meddling in the Argentine federal justice system have mounted in recent years, and as they have politicians have converted the scandals into a political issue.[12] While the CDIE team was in Argentina, a major scandal erupted within the court over a decision that was first missing and then turned up doctored. Since the case involved a judgment against the Central Bank that would eventually cost the state several million dollars, it appeared likely that the executive branch's hand was involved in the affair. Supreme Court justices, opposition politicians and cabinet ministers publicly accused one another of complicity in the case, with several opposition party leaders calling for the removal of the Supreme Court. The mixture of scandal, politics and personal vendetta generated a great deal of public interest in the case, fueled by television, newspaper, and magazine coverage. One daily newspaper ran successive sensational front-page headlines (the most interesting of which was *"La Suprema*

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[11] Sometimes the two overlap. In a case that erupted while one of the CDIE teams members was in Argentina, a provincial governor disappeared for two days and then resurfaced claiming he had been kidnapped. To assuage doubts about the validity of his claim, the governor appointed a state prosecutor to investigate the case. Shortly thereafter, a newspaper discovered that the prosecutor appointed by the governor was a personal friend of his who was covering up for the truth that his kidnapping was in fact an abduction by the jealous husband of a woman the governor had been having an affair with. What followed was a true media feeding frenzy: for several weeks afterward magazines, newspapers and television shows feasted over the odd mix of the abuse of state power and infidelity.

[12] One book, *Robo para la corona*, details all of the major corruption scandals that have rocked the Menem administration from 1989 until 1991, many of which have involved replacing judges hearing the cases with ones more favorable to the government.

Corte a la Putanesca") accompanied by long detailed stories on the "*Escádolo en la Corte*" for more than a week after the affair broke.[13]

The media's behavior, however, borders on the sensational. In a 1989 *New Yorker* article on Argentina the reporter, Alma Guillermoprieto summed up the environment so: "The peculiar convergence of the Menem era and an uncensored and rowdy press makes for great entertainment but for less than satisfying politics."[14] The danger is that what is emerging is a shrill, noisy media and not the responsible, engaged media essential to democratic government. In the words of two reporters for a popular weekly Argentine magazine, "We like to have a Watergate every week, and if it isn't a Watergate it doesn't make the news." Smaller and more mundane issues such as the delays in the administration of justice then may get drowned out in the rush to cover more sensational, head-line grabbing news. As several journalists worried, the media's obsession with constantly raising scandal may over time breed disillusion in the population if the issues they raise are never addressed by the state. Moreover, by forcing politicians to address only the sensationalist issues, these journalist fretted that they may be taking the politicians' time and attention away from some of the more pressing, but less sexy issues.

Nevertheless, this activism has meant that the media have become a critical influence on politicians and a check on political power--some sources claiming that they fill the vacuum left by a weak legislature and judiciary. According to independent observers and journalists, politicians now regularly follow the events covered in the press and attempt to respond to the concerns voiced in the media. Issues echoed by the media are also often picked up by opposition politicians who use them in their political campaigns.

Increasingly, public opinion is also becoming a strong factor to affect the behavior of political elites in Argentina. Polling has emerged as somewhat of a boom industry since the transition to democracy and with it Buenos Aires now counts five major polling organizations that cover the country. By all accounts, political leaders keep a close eye on polls in order to gauge public opinion.

The political effects of polling come through two main sources. First is the publication of polling results in newspapers--a relatively recent phenomenon for Argentine politics. In the first democratic elections after the military government in 1983, only

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[13] *Página 12*, September 30-October 10, 1993.

[14] "Letter from Buenos Aires" in *The New Yorker* July 15, 1991.

one major newspaper, *Clarín*, regularly published pre-election polls. By 1985, the last hold out among the dailies finally gave in and the conservative paper *La Nación* began regularly to print opinion polls in its paper. Today, almost every day one of the newspapers will publish a recent poll on some topic, from the political concerns of voters to the favorite pastimes of Argentines.

A second channel of influence for public opinion has been the hiring of pollsters by political parties. According to several sources this has become a common practice, with political leaders using the polls not only to read public opinion but also to test popular responses to possible policy changes.

The capacity or willingness of judicial elites to react to popular opinion or media criticism appears to relate to the degree of political control over the justice system. Of the three higher courts the team studied, the National Supreme Court in Buenos Aires, the Supreme Court of the Province of Buenos Aires and the Uruguayan Supreme Court, almost all of our sources acknowledged that a primary factor that provoked the SCPBA and Uruguayan Supreme Court to change was public dissatisfaction with the justice system, often expressed through the media. For both courts, deciding to pursue a reform agenda was a decision reached among members of the judiciary in the hope that by improving the administration of justice, they could improve the public's perception of the judiciary.

In the case of the Argentine Supreme Court of the Nation, however, it appears that reform will have to be more of a political decision than a judicial one. And because of this the decision has been longer in coming. For the moment the heat seems to be increasing. A Gallup poll on Argentine attitudes towards institutions concluded that popular approval of the justice system had dropped 40% (from 57% to 17%) in the last decade, while correspondingly, the public's negative perception of the justice system had increased over 40%. (Gallup, 1993) In a relatively short amount of time, the Argentine judicial system has gone from one of the institutions viewed most favorably to now one with one of the lowest approval ratings--second only to the police and the military. (See the graph below)

Inflammatory reports of supreme court politics, the results of the FME/AA study on judicial administration, public opinion concerning corruption, and the low popular esteem for the Justice System are now in the public domain, where they have begun to goad political elites--and most particularly the President--into acting. As a result, the state of the justice system has become a central political topic.

In December 1993, former President Alfonsín and President Menem

announced a constitutional reform pact that--among other measures--would lift the current ban on consecutive presidential terms in return for a de-politicization of the Supreme Court. The latter arrangement officially declared that future Supreme Court appointments must be cleared by opposition parties. But more important was a private agreement between Menem and Alfonsín that the government would force the resignation of two sitting justices, with their successors to be agreed upon by the two leaders.

In the weeks that followed, the president managed to pressure two justices to resign and the standing Chief Justice to step aside in order to let another justice assume the post. One justice that Menem had obviously picked to resign publicly refused stating that "The President has as much right to demand my resignation as I have to demand his."[15] The justice's statements became indicative of the general public attitude towards the executive's manipulation.

Unfortunately, rather than improve the image of the court, the measures only served to increase its image as a political tool of politicians, this time as a chip to be bargained away for another presidential term. Newspaper editorials and television commentators publicly denounced the pact and the subsequent actions of the President. (One magazine depicted the two leaders as old style *caudillos* standing astride a map of Argentina.) The public's opinion of what had occurred was made painfully obvious to Menem and Alfonsín in the elections to the constitutional convention that was to ratify the pact. In the Federal Capital of Buenos Aires a coalition of leftist parties, Frente Grande, that had formed to oppose the constitutional reform beat both the Peronist and the Radical Parties.[16] The election returns were intended to send a clear message by the public against the deal-making of their leaders in matters of the Supreme Court.

Nevertheless, most observers are still guardedly optimistic that something soon will be done to address the inefficient and uneven administration of justice and the hemorrhaging of public respect for the court. How this will be accomplished is yet to be seen, especially since the most recent efforts have apparently run aground on public cynicism regarding the president's motives. In the end, will all of the media attention and efforts of NGOs have registered a direct impact? The answer it appears for now is yes

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[15] "Alfonsín Makes Unexpected U-turn" in *Latin American Regional Reports - Southern Cone*, December 23, 1993

[16] Before this vote the parties that comprised the coalition had never received more than 15% of the vote, at the time leading several observers to conclude that the left in Argentina was fading.

in that they have increased public attention, almost to a fevered pitch, to the issue of judicial reform. But ultimately, the decision is still a political one which President Menem will make.

One of the strongest incentives for change may be the World Bank study and the proposed loan to assist the government reform its judicial system. As the government demonstrated when it moved to reform the state administration, pressure from commercial sectors and the lure of outside assistance is a strong inducement for executive action. In the meantime, as the justice system is left in its current state and politicians are exposed in all of their self interest, popular disapproval may turn to disillusion that may ultimately weaken the legitimacy of the current democracy.

The Commercial Sector: In Argentina Perhaps the Clearest Path to the Casa Rosada

In both Argentina and Uruguay, the legal environment still bears the legacy of the countries' histories of heavy state involvement in the economy, pro-labor policies and highly protected markets. For private interests in the two countries, the cultural and legal environments these have left behind are an obstacle to investment and growth. In addition, in Argentina the legal uncertainties arising from the *inseguridad juridica* discussed above and government rule making by executive decree have created an unstable investment environment for private businesses. With both of these countries now attempting to liberalize their economies, the access of commercial interests to a stable, efficient and fair legal system has assumed greater importance.

Inevitably, in countries that have practically matured in a heavily protected and state sponsored environment (what Carlos Waisman aptly refers to as hot house capitalism--1992) there is bound to be a substantial portion of business interests that do not wish to see the legal environment changed. Many of these groups may have benefitted under the previous arrangement, having enjoyed sole contracting privileges for government procurement or a virtual monopoly in the domestic market. Free trade or privatization of state enterprises will threaten many of these often uncompetitive firms. Moreover, for such organizations, a sudden shift to profit motive demands a substantial change in the firm's mentality; it will often require trimming costs, laying off employees, and modernizing production techniques and equipment.

Liberalization of this type also exacts a cost on labor. In Argentina and Uruguay, because of the relative strength of unions vis à vis the state, workers enjoyed near full employment with little wage differential between sectors. Further, because of the political power of unions, a network of laws favoring labor in

their relations with employees have grown up over time: laws that either explicitly prohibit or make prohibitively expensive the dismissal of employees. Reforming these laws may also require a change in mentality. A culture that for decades has favored the working class and instituted at times extensive social welfare programs cannot overnight be expected to become, crudely put, capitalist inspired Social Darwinists.

In Argentina a variety of factors have converged to strengthen the hand of private, pro-reform sectors, while weakening the position of earlier rent-seeking firms. The dramatic, and at times brutal, market liberalization under the military regime during the 1970s severely contracted the country's previously protected core manufacturers at the same time that it weakened the popular base of the unions. The *coup de grâce* came with the hyperinflationary eruptions in the mid and late 1980s. Riding the wave of panic and calls for dramatic change, Menem used the crisis as an opportunity to adopt a radical reform program, cutting the state budget, laying off state employees, privatizing almost all of the state's public companies, and cutting tariffs and barriers to trade. As a result, of these reforms, Argentina's traditionally protected and oligopolistic producers now have less of a voice politically and economically.

With inflation no longer a looming concern and new and old firms forced to compete in the market, the issue of *seguridad juridica* has assumed prime importance. According to a series of interviews conducted with business leaders this sentiment cuts across a broad spectrum of the commercial community. The breadth of the current judicial crisis has also forced businesses to look at reform of the entire legal system instead of the narrow area of commercial or labor law.

Evidenced through interviews, polls and the activities of existing business associations, it is apparent that in Argentine commercial associations are a viable and active constituency for legal and judicial reform. Moreover, the extent of the business community's concern over the legal environment is evidenced by the recent formation of two separate NGOs in the commercial sector to deal with the issue of legal and judicial reform: *Fundación para la Modernización del Estado* and *IDEA (Instituto para lel Desarrollo de Empresarios en la Argentina)*. Their position is made all the more important because of the close relation between the current administration and the private sector.

A poll conducted by the *Fundación para la Modernización del Estado*, an association of 80 private businesses, asked five private sector business managers what they believed to be the most important issues in the legal sector today. Fundamental problems scored the

highest over more directly related commercial concerns. The responses indicated that the inefficiency of the judiciary, the need for the state to commit greater resources to the justice system, and the politicization of the courts are a key concern among these business leaders. Their concerns were expressed through comments such as:

- "Generally the system doesn't work well."
- "Delays in procedures amount to a privation of justice."
- "Everything needs to be changed, especially the Supreme Court."

Similarly, another association of private businesses, IDEA, is trying to push the issue of judicial reform by building popular support and lobbying the state for changes in the present justice system. Comprised of such international commercial giants as Exxon, Mansato, and Bayer, the group has not limited its demands to changes in commercial and labor laws. Among the key problems that the group has identified and works to change are: existing delays the administration of justice, high costs of litigation, and organizational and management inefficiencies in the court. And currently, IDEA is collaborating on an anti-corruption program with *Poder Ciudadano*.

According to the organization's president, most of the larger businesses already have established arbitration mechanisms in their contracts before they invest in Argentina and thus are not directly affected by the current state of the justice system. Part of their concern arises out of the potential threat to democracy--and hence to the stability of the current market--should the present conditions be allowed to remain or deteriorate.

The political influence of these private commercial sectors is considerable. The Menem administration counts private business as one its of primary bases of support. In the president's reorganization of the economy, a symbiotic relationship evolved between the two. Private businesses supported structural adjustment in order to end inflation--in spite of higher taxes and a temporary economic recession--and Menem relied on businesses to build his own political power. A recent opinion poll conducted by *Prensa Económica* showed that 57% of company directors and managers interviewed would support Menem's re-election.[17]

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[17] "Summary: Argentina, No. 2 1993" in *EIU Country Report*, 2nd Quarter, 1993.

Recently USAID has begun to work through commercial sector NGOs. With USAID funding, FME and Arthur Anderson conducted a study on the administration of justice. An earlier FME financed study on reform of state administration was successfully adopted by the GOA after the FME lobbied for the study's recommendations. However, it is still to early to measure what effect of the recommendations from the recent judicial sector report will have. The study was only published in the newspapers last November and is still under consideration by the government.

In sum, the willingness of the business sector to address AOJ is a positive trend in the larger push for legal sector reform. Past evidence indicates that one of the lobbies with the clearest access to the president is the business community. Earlier issues taken up by the private sector, i.e. privatization, market liberalization and state reform, have been adopted by the administration.

In Uruguay the commercial sector has not emerged as a significant lobby for legal system reform. Almost a century of social democracy and corporatist policy-making within an economy closed to international competition have left an economic and social environment that is slow to react to new changes and the need for institutional reforms. Private sector firms have come to expect a cozy relationship with a state that would negotiate market shares and arbitrate pacts between labor and business. Even the prospect of new growth is limited in how much it can create a new coalition for change. The country's economy is simply too small to generate a sizeable private business community that can act as an effective counter weight to the Uruguayan social democratic culture and entrenched businesses.[18]

In its Legal, Regulatory and Legislative Analysis Project, USAID/Uruguay is presently working with the *Centro de Estudios de la Realidad Económica y Social*, CERES, to increase public awareness of legal and regulatory impediments to investment. Unfortunately, the current state of Uruguayan political economy is not favorable for such efforts. In the words of the President of the American Chamber of Commerce, "There is currently no constituency to be found in the business sector." Another source admitted that in Uruguay the private businesses that do exist "do not yet understand how to lobby for what they want."

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[18] As of 1992, Uruguay had a population of less than 3.5 million people and an economy of only $9.5 billion in output. (*Inter-American Development Bank, Assessment of Uruguayan Economy*)

Summary:

In spite of the many positive trends in the emergence of a strong pro-reform constituency in Argentina at the popular level, the capacity of NGOs and public opinion to affect elite behavior from the "outside" in Argentina is constrained by three factors.

First is the legacy of the political domination of the federal judicial system. As long an executive power retains excessive control over the judicial branch, attempts at judicial reform without addressing the fundamental structural distortion will be only marginal. Yet political domination over the judiciary increases the amount of pressure the public must apply in order to effect dramatic change within the justice system--despite the easy conclusion that elected politicians are more likely to feel the heat of popular opinion. This is so for the following reason: to the self-interested political leader, profound judicial reform represents a restraint on his or her power. For a political elite that enjoys the benefits of a subservient judiciary, committing to reforms that will ultimately establish an independent judiciary requires the threat of higher "cost" than for a politician that has grown accustomed to the checks of an independent judicial branch.

Second is the nature of the Supreme Court and Ministry of Justice in Argentina. As one prominent Argentine attorney and president of an NGO explained, public institutions in Argentina still operate in an authoritarian manner; their purpose is to accumulate or preserve power, with little answerability to civil society. Argentine demand side-strategies needed to penetrate this isolation in order to register an effect. As the case of *Fundación Libra* demonstrates, however, this may be accomplished in several small areas, such as mediation.

The above descriptions of constituency/coalition building strategies and their problems in Argentina and Uruguay permit us to draw some general conclusions about these strategies. These are:

- even in cases where an elite coalition appears in place, working with outside, demand-oriented groups may help to maintain the pressure for change on the coalition as well as include a wider network of actors in the reform process;

- a highly politicized judiciary is more resistant to change since political elites will be reluctant to establish an independent justice system and thereby curtail their own power;

- in the cases where there does not exist an elite consensus for broad changes in the judicial system, it may be more effective to engage the state in a number of smaller areas

to improve the legal sector;

- working with the commercial sector to promote reform can be particularly efficacious when two conditions are present: 1) there is relative homogeneity within the business community over the need for reform and 2) the administration retains a close political relationship with private business.

III. STRUCTURAL REFORM STRATEGIES

Time and Punishment: The Effects of Oral Procedures on Court Delays and the Quality of Justice

As noted above, structural reforms were initiated in both countries before USAID involvement. In Argentina, structural reforms consisted primarily of the adoption of oral procedures in the federal criminal court system and the creation of a committee to nominate candidates to the president for judicial appointment.[19] In Uruguay, the government switched from traditional written procedures in 1988 to an oral procedure code for non criminal cases; and, in order to facilitate the change, the government radically expanded the judiciary by over 100 new judges. After the creation of the judicial school, CEJU, the Uruguayan Supreme Court also began a de facto policy of appointing only judges who had satisfactorily completed the school's training courses.

For both countries, these structural changes were not without their obstacles. However, in the case of Uruguay difficulties have been mostly overcome, and the early adjustments that arose during the transition permitted a more substantial role for USAID and other donors. In Argentina many of these obstacles have yet to be resolved, thus dampening many of the potential benefits from the reforms.

In the Uruguayan civil court and the Argentine penal court, oral procedures replaced the traditional Civil Law Codes that traced their origins to the Spanish Codes of colonial times. The old

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[19] Oral proceedings in the provincial level are not new in Argentina. They were fist adopted in 1940 in the Province of Córdoba for its provincial courts. The Córdoba code served as a model for the rest of Argentina and gradually spread through the provinces during the 1940s and 1950s, making the Federal Government the last to adopt it. In the case of the Province of Buenos Aires, however, this only applied to a very small fraction of the cases: one source said four per month out of a monthly total of 3,000.

codes established a written, time consuming and expensive process that added to the image of a closed judicial system.

With the evidence and arguments presented to the judge in writing--including the testimony of witnesses--the judicial processes behind the final decisions remained closed, detracting from the transparency of the process and opening the door to influence peddling or worse. Furthermore, in the case of the penal process, the excessive burden created by written procedures often meant that judges resorted to time saving devices: delegating their duties to actuarios[20] or other non-judicial functionaries (who are often targets of pressure from competing parties) and sometimes simply skimming over case dossiers and signing findings prepared by law clerks.

Under the new oral penal codes in Argentina, the heart of the trial process is conducted orally with a sitting judge or judges. Participants present evidence, interrogate witnesses and make oral summation of the arguments for each side. In Uruguay, procedural reform introduced three oral stages into the civil litigation process. The first is a pre-trial hearing in whose basic purpose is to encourage a conciliation or settlement between the parties, and failing that, to produce a stipulation of the facts and narrowing of the issues. The second is the actual trial, where presentation of evidence, interrogation of witnesses and summary arguments are now done orally. And the third is the sentencing stage, although according to a Uruguayan judge this is more of a formality.

In both systems, oral procedures have obvious benefits. The face to face contact between witnesses, the accused, and judges permits for greater clarification of testimony, issues and evidence that would not occur, or would require more time, under written procedures. The required preliminary hearings in the Uruguayan civil courts also provide an opportunity for the parties to narrow the issues at stake and at times reach a conciliation before the case reaches the full trial stage. Moreover, it permits the judge to directly instruct the parties and their attorneys on the date for the next stage in the process and on the requirements necessary for successfully proceeding with the case, including the evidence required, identification of witnesses to be summoned, and whether any other parties and their attorneys need be involved.

Perhaps most important, oral hearings provide the parties involved,

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[20] The *actuario* is a professional judicial functionary, often with a legal education. Traditionally, they have taken an active role in processing cases, sometimes deciding the whole process themselves.

and those who choose to attend, an opportunity to better comprehend the operation of the legal process. By permitting citizens to watch, listen and participate in the trial process, justice begins to appear less arcane and more transparent, accessible, and understandable. Just as important, the direct participation of the judge in the process allows him or her to observe the demeanor of the parties, obtain a better understanding of why the parties are litigating and in general, to penetrate deeper into the context and subtleties of the case.

The CDIE team's observations of two oral hearings in Uruguay and Argentina noted that one of the most defining features of the proceedings was that they were open and non-threatening. In a pre-trial hearing observed in Uruguay the proceedings were conducted in a simple process with little or no ritual. At one point, one of the parties felt free to talk directly to the judge without prior consultation with his lawyer, and the judge responded personably.

In the criminal case in Argentina, the defendant was permitted to watch the testimony of the witnesses and the arguments of both sides during the case. At one point, the witness was called to take the stand, answering the questions of the attorneys and the judges. About 15 to 20 people were in the audience, apparently friends of the defendant.

Despite these benefits, the transition to oral procedures in both countries has not been smooth, and there still remain some issues that will need to be addressed. In Argentina these problems have been more serious than those of Uruguay. First, unlike the oral procedural reform in Uruguay, the decision to convert penal courts to oral procedures in Argentina was not accompanied with a parallel expansion of judges that could handle the new procedures. Recently--after adopting the reform--Argentina's legislature approved the nomination of 250 new judges to handle the new case brought in under oral procedures. However, most of these judges have yet to assume office, due to the lack of adequate space in which to hold the hearings. In fact, several old court sites have been closed because of structural (safety) problems, and new sites for the criminal courts have not been established.

Second, new and sitting judges, prosecutors and other personnel have not received adequate preparation for the new oral processes--unlike in Uruguay. Plans to establish a judicial school, with USAID assistance, have been deadlocked in a series of internal battles within the Supreme Court, that given recent events seem no closer to resolution. (See Legal System Strengthening.)

Because of these difficulties, oral procedures have made little appreciable impact on the Federal Penal system. According to statistics from the Argentine National Supreme Court, less than two

percent of the total cases processed through the federal court system were processed under oral procedures. (*Boletin Estadistico*, 1991-1993) Part of this is because cases that were already in the system were given the option of being tried under oral or written procedures; and out of familiarity most opted for written. Another part of this, however, is the small number of courts the nation is devoting to oral cases. Out of 55 total penal courts, only 16 of those were processing cases under oral procedures by July, 1993. [21]

At this time, only six months after their initiation, oral procedures appear to take longer than written procedures. To measure this we compared the average rate of delay for the oral procedure courts to the written courts for the six month period in which the courts have been in operation, using the backlog index.

A standard and relatively simple measure to determine the rate at which cases are being processed by the courts is the backlog index. The index number is arrived at by dividing the number of cases pending at the beginning of the year with the number of resolved cases during the year. A value of 1.00 or greater means that the court has increased the number of pending cases that it had at the beginning of the year, and that the court is "backing up" (a condition unless resolved that will quickly snowball). If the number is less than .50 it means that the court has resolved double the number of cases it had at the beginning of the year.[22]

We calculated the index for both sets of courts for the six month period between January 1, 1993 to June 30, 1993. Calculating the numbers in this way provides some idea as to the extent oral procedures are alleviating court delays in the Argentine Penal system. These were the results:[23]

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[21] Secretariat of Statistics, Supreme Court of the Nation, Buenos Aires.

[22] John Goerdt, Chris Lomvardias, Geoff Gallas and Barry Mahoney, *Examining Court Delay: The pace of Litigation in 26 Urban Trial Courts, 1987* (Williamsburg: National Center for State Courts, 1989)

[23] Doing this required a sleight of hand for the oral courts. The index involves dividing the number of pending cases at the beginning of the period (in this case six months, from 1/1/93-6/30/93) by the number of resolved cases. But since the courts were only created in January, 1993 there were no pending cases. We resolved this by using the cases that were initiated in the six month period as the pending cases.

- Non-Oral Courts:

$$\frac{\text{8086 (number of pending cases)}}{\text{31349 (number of resolved cases)}} = \textbf{.257} \text{ (backlog index)}$$

- Oral Courts:

$$\frac{\text{1318 (number of pending cases)}}{\text{715 (number of resolved cases)}} = \textbf{1.84} \text{ (backlog index)}$$

Oral courts demonstrate a backlog index that is over 7 times higher than non-oral courts. At the same time oral courts also carried a lighter case load than their non-oral colleagues. From January 1, 1993 to June 30, 1993, the average case per oral court was 120, while in the written courts it was 1,138: over ten times as many cases.[24]

These numbers however should not be taken to indicate the inherent delay of oral procedures, nor that justice is somehow worse since the implementation of oral procedures. (Faster justice is not necessarily better justice.) Reduced case-load for the oral courts permits judges to take more time to review cases, as is necessary for oral procedures. And conceivably the decisions produced under oral procedures are "better." Many of the delays may be attributed to a learning curve for judges. However, without the planned judicial training in place this may take longer. Further, without a training program in place it also raises the question the qualitative improvement in these decisions can be if the judges and attorneys are not trained for these new procedures.

In Uruguay the expansion of the number of judges and the creation of a judicial school have assisted in the gradual transition to oral procedures until all of the courts were working under oral procedures. New judges that were brought into the court system would hear cases under the new oral procedure, while sitting judges gradually were trained in the procedure. Under this phased-in approach, oral procedures were integrated into courts after judges had received the necessary training. At this point, all civil cases tried in the Uruguayan are under oral procedures.

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[24] Again, the number of cases for oral courts only include those initiated after January 1, 1993. Those for the non-oral courts include pending and new cases.

Nevertheless, as one would expect with such a dramatic procedural change, personal, technical and legal glitches persisted. On the personal side, for lawyers the change to oral proceedings meant a whole new means of doing their jobs. Attorneys were at first uncomfortable with the new procedures since they involved making oral presentations before the courts and examining witnesses, and many had to relearn litigating techniques.

The new procedures meant that lawyers had to appear personally at hearings or hire someone to appear, thus constraining their schedules. Judge-counsel relations were also often strained; the new judges tended to be too deferential with experienced and well-known lawyers while arrogant toward the younger and more inexperienced attorneys. These obstacles explain in part the initial opposition of the bar to the reforms. Nevertheless, with time, many have learned to adapt to the new procedures. Team interviews with attorneys confirmed that most of these initial fears and problems have been overcome and attorneys now support the new procedures. The new Judicial School also offers courses and workshops to deal with judge-counsel relations and oral arguments.

According to interviews and focus groups, judges have learned that conducting an efficient, non-authoritarian trial process requires objectivity and a calm attitude. This when most judges said they find oral processes more stressful.

Oral procedures also meant a change of work style and environment for judges. Where before under written procedures judges worked mostly in their home at their leisure, oral procedures now require judges to keep a stricter schedule regarding trial dates. Oral trials require listening instead of reading, and several of the judges commented that this at first required an adjustment. Such seemingly minor things as demeanor and dress also have become important. Nevertheless, in spite of these problems all of the judges interviewed agreed enthusiastically that oral procedures have been an improvement in the justice system in Uruguay.

As oral procedures have been integrated into the courts in Uruguay, judges and court personnel have noted that the change also requires some technical and administrative adjustments. Since much of the argument and the testimony of the witnesses is no longer presented in writing, courts are searching for a means to record the trials. Currently, courts are using a regular typist which is slow and noisy.

Staffing of judicial offices and delegation of responsibilities among the staff will require further changes. Now that judges are directly involved in the trial process, the role of the *actuarios* is not as important as before. On the other hand judges still find themselves having to conduct much of the research for pending

cases, at the same time that they are required to sit in trial. Many of these issues are simply a matter of adjusting and retraining staff. With time and the proper training, either through curricula changes in law schools or through CEJU, these will be ironed out.

Regarding the effect of oral procedures, increased judges and training on delays, cases in the Uruguayan civil courts are actually progressing slower than before 1989. In 1990 10 civil courts were added to the civil court system in Montevideo, the same year in which the system began to integrate oral procedures into the courts. In 1991 the court system created 29 justice of the peace courts in Montevideo, thus draining off a percentage of the cases in the civil courts.

In order to get an idea of the combined effects of these reforms we can compare the backlog index for the periods of 1988 until 1989 and 1991 to 1992 with the same method we used for the Argentine courts.[25] When we do we get the following results:

- Non-Oral Courts, 1988-1989:

  $$\frac{6,139 \text{ (total cases pending)}}{4,235 \text{ (total cases resolved)}[26]} = \mathbf{1.44} \text{ (backlog index)}$$

- Oral Courts, 1991-1992:

  $$\frac{1,740 \text{ (total cases pending)}}{1,038 \text{ (total cases resolved)}} = \mathbf{1.6} \text{ (backlog index)}$$

At the risk of restating the obvious, despite what would have seemed to be favorable conditions, civil courts after 1990 were actually processing cases **more slowly** than they were under written procedures.

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[25] John Goerdt, Chris Lomvardias, Geoff Gallas and Barry Mahoney, *Examining Court Delay: The pace of Litigation in 26 Urban Trial Courts, 1987* (Williamsburg: National Center for State Courts, 1989)

[26] As with the Argentine numbers, these include those that were dismissed or filed as well as those that reached a sentence.

Court expansion after 1990 also meant that judges received fewer cases, thus allowing for more time to review individual cases as the oral procedures require. In 1988 (to take a sample year) the average number of cases (pending and initiated) per court was over 331. With the addition of ten new courts, in 1990--before the justices of the peace were added--this was reduced to an average of 64. After the creation of 29 justices of the peace in 1991, this average in the civil courts was reduced even further to 50 cases per court.

At this point, it would appear that the reforms undertaken by the court have, if anything had a negative impact on court flow. Some of this can be explained by the still relative inexperience of the system to the oral procedures. Nevertheless, the reduced case load of each court will permit judges to review cases more carefully than before, and this alone can produce better decisions. Currently the Supreme Court is planning a qualitative review of case decisions to determine the extent to which decision are "better."

Last, the creation of the Advisory Committee to the President for the appointment of judges in Argentina has not fulfilled expectations. Like many of the reform attempts in Argentina the board's effectiveness has been caught up and to a certain degree lost in the politics surrounding the justice system. Even though the Committee was dominated by individuals close to the President, the Executive has only accepted about one-fifth of the Committee's recommendations. The above mentioned pact between Alfonsín and Menem to appoint judicial members by agreement is an obvious indication that the board has had little impact of defusing the political biases of judicial appointments.

Summary:

There are several conclusions we can draw, both from the individual cases and from comparison. One similar issue was in the previous section on constituency/coalition building. The problem relates to the need to assist outside groups that support the structural reform, rather than to rely on elite initiative.

The example of Argentine Advisory Committee to the President for the appointment of judges is somewhat different, but follows the same line of argument. In this case, the creation of a Committee with no real powers of its own, proved to be a weak, if not a non-existent check on executive prerogative to choose political appointees for the courts. The specific content of the reform was rendered practically moot without the effective mechanisms to enforce its intent.

From these points and the summary discussions above, we can draw several lessons from cases of structural reforms in Argentina and Uruguay. Some of these are:

- structural reforms may sometimes require the strengthening of mechanisms either through constituency building or institutional reforms that will ensure their endurance and their enforcement;

- oral procedures **will not** mean, at least in the early stages, faster processing of court cases, and may in fact, at least temporarily, lead to greater court delays;

- oral procedures even despite early problems, will improve the justice system through greater transparency and contact between judges and litigants;

- increasing the number of judges will assist the transition process, by integrating newly trained justices into the system and decreasing the workload of the oral courts, giving them time to adjust;

- as a court adopts to oral procedures there will arise technical glitches. With training and technical assistance these can be overcome, and provide an effective window of opportunity for donors (see Legal System Strengthening);

- oral procedures will require that court administrators and judges rethink and reorient their staffs and their duties.

IV. ACCESS CREATION STRATEGIES

Our attention now turns to access creation strategies in Argentina and Uruguay. In the former, USAID assistance in this area has been devoted principally to four areas: training of public defenders by the NGO FORES; four pilot projects in legal aid/mediation with the Ministry of Justice; and the expansion of ADR in the federal courts.[27]

In Uruguay access for the poor is not as serious an issue. Instead, international donors (USAID and IDB) have focused on the

[27] Under A.I.D.'s project with the SCPBA several smaller activities are being conducted under the Legal Access Project. One of these will be discussed with the NGO that assisted in the activity (FORES).

access of commercial sectors to a fair and speedy trial. USAID is attempting to encourage commercial ADR by sponsoring a series of courses on mediation for judges.

The Legal Aid/Mediation Centers: Too Much Time on Their Hands

With the interest and partial funding of the Argentine Ministry of Justice, USAID assisted in the creation of four pilot legal aid/mediation programs in separate lower middle and working-class neighborhoods in Greater Buenos Aires. Although funded in part by the Argentine Ministry of Justice, momentum for establishing the program came in a large part from USAID's original funding.

The center employees a team of recent law school graduates who receive only a $15 a day stipend paid for by USAID (existing laws in the MOJ prohibit paying for the services). The centers are coordinated by an experienced attorney and run by the Secretary of Legislative Affairs in the Ministry of Justice.

The centers offer free mediation and legal advice for claims or conflicts under $1,000 in value. While most of the centers' clients are low income people, most of the centers provides services to anyone, regardless of economic status. According to the center's director, 90% of the clients were considered low income.

The Ministry of Justice in collaboration with *Fundación Libra* trains the staff on mediation techniques, as well as law seminars in areas like family law, domestic service and pensions. Cooperating community organizations provide the space--such as a church in the site visited by the CDIE team.

The legal aid centers use mediation techniques in order to resolve disputes, but they do not practice official mediation. Initial case interviews take about 30 minutes. If the lawyers determine that mediation is appropriate and the client agrees, then the client is given a letter to deliver to the other party inviting him or her to a mediation session the following week. At the session, a single lawyer sits with the two parties, explains the process and guides them through discussions, which last an average of 90 minutes. Often cases are resolved without the need for mediation. However, if mediation techniques are used and there is an agreement, the lawyer types up a summary of the agreement and both parties sign it. The agreement has the force of a contract; if one party fails to comply it can be enforced in court.

Statistics provided by the Ministry of Justice on the operation of the centers for one year (February 1992 to February 1993) are summarized in the table below. The statistics were filed

quarterly; the number below "Q" refer to the number of cases received that quarter. "Mediated" refers to the cases resolved through mediation. "Referred" is the cases that were directed to other legal services not available at the centers. The numbers of cases resolved, mediated and referred do not add up to 100% because some cases have carried over to the next term.[28]

Table 4

	Q1	Q2	Q3	Q4	TOTAL	% OF TOTAL
Total Cases	414	547	534	443	1938	100%
Resolved	273	262	224	301	1060	54%
Mediated	44	52	39	47	182	9%
Referred	97	111	120	128	456	24%

Out of the total cases, 62% of the clients who came to the center were female. Over nineteen percent of the cases the centers dealt with concerned family law; cases concerning labor represented 16% of the total cases; and property and neighborhood disputes were third and fourth, constituting 11% and 10% of the total case load between the centers.

Use between the centers was uneven. One of the centers received over 42% of all the cases dealt with by the projects, roughly two and a half times the case load of the least used center (the one that the CDIE team visited).

From the statistics supplied by the MOJ and CDIE interviews, news of the centers' services appears poorly disseminated. According to the quarterly reports filed with the MOJ, word of mouth was the most common way in which most of the clients had found out about the service. Members of the CDIE team that visited one site on several occasions observed that only several clients came each day, leaving most of the lawyers with little to do. Lawyers at the centers believed that use would increase with a greater effort at publicity. Shortly after the program was established the Minister of Justice announced initiation of the program on t.v., resulting

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[28] "Estadistica Correspondiente a la Actividad de los Centros de Consulta, Conciliación y Arbitraje" (February 1992-February 1993), *Ministerio de Justica de la Nación, Programa Social de Servicio Juridico y Formación Juridica Comunitaria*

in an initial burst of utilization, that eventually fell off when the publicity decreased. Presently, however, the Minister of Justice wants to keep a low profile for the program and has curtailed advertising.

Nevertheless, the Ministry of Justice is pleased with the programs and would like to extend them. In cooperation with the Ministry of Education, the MOJ would like to open four to six new legal aid/mediation centers, similar to the original four but also combining lawyers with social workers and psychologists. Although the current centers are forced to work on a shoestring budget, by all accounts, within the Ministry interest in the program appears to be quite high. Perhaps the greatest sign of upper level approval in the highly political environment of Argentina is that the present program has lasted through four different Ministers of Justice under two presidential administrations.

Training Public Defenders in Argentina

Almost since the beginning of its program in Argentina, USAID has been supporting the efforts of FORES (Foro de Estudios Sobre la Administracion de Justicia) in the training of public defenders. Public defense work attracts some of the best graduates from law school--as a means of training more than devotion. But because of tight budgets for justice related issues, there is currently no state-sponsored training program for public defenders. Often new recruits from law school are only educated in legal theory rather than practice. FORES has attempted to fill this gap by providing a private service to train public defenders. Training seminars have also targeted law students and institutions working in legal aid and with poorer people, in order to broaden the network of pro-bono services provided by the legal community.

A great deal of FORES's effort has been devoted to training of public defenders in Buenos Aires province and Federal Capital, where according to FORES statistics there is the greatest shortest of public defenders. Through written materials and brochures FORES has also been able to conduct long distance training in some of the outlying provinces. In addition, FORES has conducted seminars in Buenos Aires between legal aid organizations and public defenders offices as a means of fostering greater cooperation between the two spheres.

FORES has emerged as a leader in training with public defenders, facilitating contacts within the field of legal aid, creating a sense of identity among public defenders, helping public defenders organize, and generally increasing public awareness of the issue. Nonetheless, at this point direct impact on beneficiaries is difficult, if not impossible, to gauge. A large measure of their

effectiveness depends on creating pressure on the state to increase the budgets of public defenders and make many other needed changes in the administration of public defenders offices. Training may help to improve the effectiveness of the defenders, but the problem of understaffed, overworked public defenders offices will remain until the state decides to commit attention and resources to the problem.

Training, of course, is a step in that process, as are seminars and workshops with legal aid workers and organizations; activities such as these start to build a constituency for support within the community. A seminar conducted in the Province of Buenos Aires by the SCPBA and FORES indicates that political will at least in the Buenos Aires Province may be building. However, as the events in the nation's capital attest--as when the MOJ halted the Public Defender Committee's work--, this can also be quickly reversed.

ADR and the Argentine and Uruguayan Judicial Systems: Tentative Starts

Presently, two USAID supported ADR activities are underway: a 10 court pilot mediation program with the Ministry of Justice and a smaller program to train judges in the Province of Buenos Aires in mediation techniques. In Uruguay, USAID is initiating a project to train lawyers in commercial and labor negotiation, arbitration and mediation.

Efforts to institutionalize ADR in the Argentine courts is a mix of Executive-led innovation and small scale demonstration as a means to overcome opposition by judges and attorneys to ADR. The Argentine pilot project in ADR began after the executive branch issued a decree to integrate mediation in the courts. The decree officially declared the Executive's interest in mediation and created Mediation Corps and a Mediation Commission under the Ministry of Justice. The Commission consists of Court of Appeals judges, First Instance judges, and the Minister of Justice.

At a provincial level the Mediation Commission works primarily with justices of the peace and civil judges from the provinces through intensive twelve to sixteen hour mediation workshops. Community leaders also commonly take the courses and become instructors within their regions. Mediation as an alternative way of resolving conflicts is "sold" to provincial authorities and judges after a thorough discussion of administration of justice problems (court backlogs, etc.) in the area.

Through this method most of the provinces have now integrated ADR techniques into the courts. Provincial judges are more receptive to mediation than their Buenos Aires counterparts because they are

more likely to personally know the people involved, making it a less threatening process for both the judge and the parties. The Federal judges in Buenos Aires, on the other hand, seem fearful that mediation will erode their power and position.

The ADR pilot project in the nation's capital is intended to alleviate some of this fear through example. Under the USAID/MOJ pilot project, ten courts will send their cases for mediation on a voluntary basis. In taking this course, the MOJ hopes to demonstrate to skeptics--within and outside of the legal system--that mediation is an effective and just tool to help decongest the courts and deliver timely and fair decisions. The MOJ has large plans for ADR should they reach this point: eventually the plan is to pass legislation making mediation obligatory in all cases.

Clearly, at the national level, ADR has taken on a high profile, due in a large part to USAID's involvement in the project. According to several sources, ADR is now gaining credibility within the legal community. However, intransigence on the part of judges and lawyers have prevented its full adoption. Bold imposition of mediation on the court system would undoubtedly have met with resistance from within, thereby diluting its potential benefits. Instead, the pilot projects, bolstered by the high level of backing they appear to have within the Executive branch, will provide a method of building support within the judicial system for ADR overtime until it can be fully integrated into the courts.

In Uruguay, it was hoped that by instituting oral proceedings the courts would create an opening for conciliation, specifically in the pre-trial hearings. However, in the team's interviews and an informal poll conducted by a professor at the National Law School, it became apparent that at this point application of mediation techniques in the courts is only tentative. A poll of 18 civil courts judges and justices of the peace on their use and perceptions of conciliation and ADR techniques indicated a high level of interest among the judges for ADR, who recognize its importance. All except one judge used mediation occasionally, and 61% applied it 50% of the time. The poll also indicated that many attorneys oppose mediation because they think that it will reduce their role in the judicial process.

At this point, most mediation is applied in *pro forma* by the judges or by using personal techniques. Moreover, judges usually assume a passive role and wait for the parties to initiate conciliation or mediation. According to one observer, judicial training and practice encourage traits that may not be conducive to effective mediation. For judges, litigation involves a zero-sum game in which the judge applies legal doctrine in a rigid dogmatic form. Moreover, judges tend to be authoritarian and very formal, careful to keep their distance from the parties.

USAID's training project in ADR intends to take mediation out of the hands of judges and place it in the hands of lawyers, who the manager of the project believes are more logical mediators. The emphasis will be on commercial and labor negotiation, arbitration and mediation. In these cases, ADR will be conducted outside of the courts, probably in the Labor Ministry or in business offices.

CDIE team interviews with business leaders and commercial sector NGOs indicated that private businesses are concerned about the legal and judicial environment in Uruguay. ADR can provide one of the means of addressing these issues.

Commercial cases currently take between seven to eight months to reach a decision in the first instance--often a significant amount of time for a private business. Existing commercial laws also tend to be vague or often favor labor over business. Within this vacuum of precedent and law, judges often "legislate from the bench." Approximately 70% of the laws affecting labor and collective bargaining originate from the judges. In this process, many of those interviewed complained that judges in Uruguay often decide on the side of labor. According to one lawyer, 86% of the cases he had handled that year involving business-labor disputes had been decided in favor of the worker. Some attributed this to the lack of commercial training of the judges; others claimed a more insidious attempt by judges to engage in distributive justice.

Part of the solution to this is legislation to establish clearer legal norms, and another to train judges in commercial law (see Legal System Strengthening). But improved access ADR will also establish for businesses quicker access to a decision and an alternative to the justice system that many in the business community distrust.

Summary:

In the case of Argentina, the success of the pilot legal/aid mediation programs and the pilot ADR project again demonstrates the benefits of working with the judiciary--or in this case the Ministry of Justice--in several small areas even when there is little or no movement on larger reform. Both of the projects appear to have significant support within the MOJ, at the same time that for the moment one, the legal aid mediation centers, has succeeded in providing legal assistance to a fairly broad number of citizens.

At the same time, however, the potential of the legal aid/mediation centers could be more fully realized with greater emphasis on advertising. The team's study of the project indicates the need for more publicity to the sectors which the project targets. The disparity among the total number of cases handled between the four

centers (in one case 2,044, in another 766) is clear evidence of the potential of higher demand for the services the centers offer. Until this under-utilization is resolved there seems to be little point in expanding the centers.

While these programs have proven successful in assisting the legal needs of the poor and working class in Argentina, it would appear that they have only a marginal impact on people's perception of the justice system in general. As was evidenced in CDIE interviews with beneficiaries of the program, these centers for most of the people are only stand-alone services that have little connection with the wider justice system. Part of this is attributable to the need/response nature of the centers: "I have a problem I come here and they solve it" as one beneficiary stated in an interview. There is only minimal curiosity concerning who was responsible for the service. The lack of attribution to the MOJ for the centers makes the Minister of Justice's wish to decrease publicity all the more difficult to understand.

The public defender and legal aid seminars and training sessions conducted by FORES straddle access creation and constituency building strategies. By working with state public defenders and private legal aid organizations, FORES is beginning to bridge the gap between many of these organizations in ways that can begin to offer better legal protection to those with less means. But at the same time, FORES's efforts also serve to generate lobbies for change, from within society and inside of the state from the public defenders office. At times their work has captured the attention of leaders within the system, as in the Province of Buenos Aires. And it is in this capacity that FORES will prove most effective.

There are other general insights that can be drawn from USAID's legal access work in Uruguay and Argentina. In brief form, these are:

- ADR can provide a useful short-term means to improve the legal and regulatory climate for investment by giving businesses a legitimate alternative to delays and difficulties in the judicial system;

- for reasons of opposition and the demeanor and attitude of judges, courts and judges may not be the most effective vehicles for the initiation of mediation and ADR techniques in a legal system.

V. LEGAL SYSTEM STRENGTHENING STRATEGIES

In Argentina, USAID has been active in supporting a number of legal system strengthening efforts, as well as laying the foundation for what it hoped would lead to deeper reforms within the system. These activities included the creation of a judicial school in the Supreme Court of the Nation, a judicial studies center directed by the *Fundación la Ley*, and three diagnostic studies of the court system.

USAID has also worked with the Supreme Court in the Province of Buenos Aires in the area of legal system strengthening. In the provincial court system, in collaboration with the Provincial Supreme Court, USAID has jointly supported a number of activities including training courses for judges, administrative modernization and decentralization, and the planning for a judicial school.

In Uruguay, USAID's legal system strengthening activities have consisted of training judges and court administrators in the judicial school, CEJU, supporting the development of an office of statistics and management, and assisting the court in administrative reform.

The section below discusses each of these cases separately, beginning with the Federal Supreme Court of Argentina and summarizing the lessons learned from the three examples in the last section.

The Argentine Supreme Court of the Nation: Great Expectations

USAID's early experience with legal system strengthening in Argentina was largely unsuccessful at the national level. Efforts to establish a judicial school, a judicial studies center, and to facilitate the implementation of several USAID funded diagnostic studies became bogged down in the political machinations outside of the Supreme Court and the personal squabbling within it.

In spite of the apparent lack of impetus for reform, serious problems of administrative inefficiency and court delays remain. The following are several of the larger problems that the Argentine Federal Courts still face:

- Because administration of the courts is highly centralized, 94% of the decisions taken by Supreme Court justices involve administrative management and only 6% concern judicial matters;

- Administration within the court is near chaos proportions. The Judicial Power now counts 16,492 employees, with their salaries alone adding up to $492 million of the $708 total judicial budget for 1994;

- In the Federal District of Buenos Aires alone, an average of 790 civil cases are filed each day in its 110 civil courts, increasing individual court loads by 4 every day;

- The 437 Federal Courts are scattered throughout the city of in 177 buildings and a number of labor and criminal courts are closed because of safety problems in the buildings;

- The average number of days it takes to resolve a case in the civil courts is 774; in commercial courts 803; in penal courts 1,140; and in labor courts 1,183.

Several of the above cited figures were the result of two earlier USAID funded court studies, the Schvarstein and the Gregorio Reports. But in spite of the shocking figures they bring to light, little has been done by the court to effectively address these issues.

What accounts for the failure to follow through on the conclusions or the proposals from these reports? One of the proposals in the Schvarstein report was indeed implemented by the Supreme Court: the creation of a statistics office to track the flow of cases in the federal and provincial cases. Nevertheless, in the few years that the office has been in operation, it has failed to produce information in a form that will facilitate understanding the reasons behind backlogs and delays. Page after page of the reports merely list the number of cases pending and resolved in each court per year without summarizing the information or providing indicators to measure the delays in each court.[29]

Moreover, according to office director, the office is practically ignored by the Supreme Court who created it. The office is given little political support in trying to obtain statistics from the courts and it receives almost no guidance in what to do with the final manual. In short, the impact of the office has been minimal, created and then forgotten.

The story is indicative of the general problem in the diagnostic studies that have been produced for the Federal Supreme Court. The reports' analyses and proposals will remain moot as long as the

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[29] *Boletin Estadistico*, 1991 and 1993, Poder Judicial, Corte Suprema de Justicia de la Nación.

Supreme Court is not engaged and attentive to the study's findings. In part the problem stems from a lack of political interest--or will--at the top; but it also is due to a failure to present the information in an understandable and clear way and to engage the court in providing solutions to the issues raised. One of the studies, the Gregorio Report, consists of nine pages of explanations about the study's methodology, 49 pages of charts and graphs, two pages of conclusions, and only one page of recommendations.[30]

The recent FME/AA study provides a convenient counter example. In this case, the consultants established an office within the Supreme Court for the writing of the report; and when the report was completed, its conclusions were announced by the, then, Chief Justice of the Supreme Court. The finished product was clear enough that several of its more salient points were reprinted in the press the next day. Now the report's findings are public knowledge, and the team that conducted the report has remained in the Supreme Court to assist the court address some of its conclusions.

Meanwhile, efforts by USAID to assist the Supreme Court establish a judicial school similar to that of Uruguay became caught in personal battles between the justices. Apparently, the former Chief Justice, Boggiano favored the expansion of an existing training program conducted by the *Asociación de Magistrados* (Judges' Association) for the training of judges in oral procedures. USAID funding was assigned to Cavagna Martínez, who had earlier been a member of the Supreme Court of Buenos Aires Province and by that time was Vice-President of the court. The result was a personal turf-war between the two, in which the planned judicial school has been caught. In this case it was the clash of personalities and not politics that undermined USAID's project.

The other legal system strengthening activity, CEJURA, is modeled on the National Center for State Courts in Williamsburg, VA. At this point the project is only in its beginning stages with its first meeting held in May 1993. Once fully functioning the intent is to create an agency for the exchange of information among the provincial courts.

In the highly political environment of Argentina, the project planners are carefully walking a thin line to establish CEJURA's only as a channel for information exchange. To permit the organization to grow into a central coordinating point among the provinces, would invite the interest of the Ministry of Justice;

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[30] Carlos Gregorio, *Investigación piloto sobre duración del proceso judicial*, February, 1993.

something which USAID and the project planners are seeking to avoid.

Supreme Court of the Province of Buenos Aires: A Tale of Two Courts

As noted in the earlier section, because USAID's activities with the SCN did not enjoy much success, USAID transferred some of its legal system strengthening activities to the La Plata, the capital of Buenos Aires Province. There USAID found that the provincial Supreme Court justices were more receptive to analyzing the needs for and undertaking legal system reform.

USAID efforts in the province are quite modest. Total U.S. funding allotted to the provincial Supreme Court at La Plata over five years is a bit over $150,000. The funds are often matched with Supreme Court money.

This raises the obvious question of what is the need of USAID financial support in a country as relatively developed as Argentina when the Supreme Court is already committed to reform. USAID funds serve three purposes in this case. First, USAID money allows the court to contract consultants and advisors that for reasons of bureaucratic red tape is difficult to do with funds from the Supreme Court. Second, even a small amount provided by USAID is significant in influencing the Supreme Court to commit its funds and energy to a given project. Last, and most important, USAID funds allow the Supreme Court to explore more long-term investments and pilot projects such as the public defenders seminars and computerization programs. Without the kind of justification that USAID money provides for such activities, Supreme Court budget would be devoted to many of the short term problems such as lack of supplies or low salaries, that while necessary do not provide any long-term solutions to the judicial system's inefficiency.

It had been decided by the Supreme Court that before they undertook any reform efforts they would first establish an office to manage the reform. The resulting Office of Planning, housed adjacent to the Supreme Court building, is the central coordinator for the USAID/SCPBA activities. Once in place, the SCPBA commissioned a study in 1988 to examine the existing management of the provincial judicial system and to make recommendations to the court.

Several of the programs implemented in the SCPBA followed from this study. A similar report with the same individual was funded by USAID for the SCN, after one of the justices in the SCPBA was appointed to the National Supreme Court. The divergent outcomes of the two studies is further evidence of the importance of the court's initial interest in the report and the need to engage the court in a series of clear follow-on projects. In the SCN the

Schvarstein Report has served mostly to create an orphaned Statistics Office and now as the starting point for the FME/Arthur Anderson study. In the SCPBA, the report has become the foundation for the courts reform project.

The 1988 study recommended reforms to decentralize the court systems management and budget process. Until recently, the La Plata Supreme Court controlled all the administrative details of the lower courts, from human resources and budgeting to procurement. The system created inefficiencies at both ends. Lower court judges were powerless to fire incompetent or absentee workers, and they would often wait months after requesting simple supplies from the court to receive a notice that the supplies were out. At the top end, one judicial employee speculated that over half of the Supreme Court Justices' time was spent resolving administrative and management issues.

After a meeting of regional court ministers, the representatives agreed to start a decentralization pilot project in the area of San Martín. Already, the planning office has experienced some resistance from office workers and from some members of the Supreme Court. By starting out as a pilot project, however, the Planning Office hopes to identify potential obstacles to a more complete decentralization effort and use the model to convince skeptics or conservatives. Within one year, the regional ministers will meet again to discuss the experience in San Martín and what lessons have been learned.

With USAID assistance, the Planning Office has also initiated a series of projects to create modern and efficient means to access information within the court. One program has set up a computerized registration system for expert witnesses in the courts, thus cataloging and centralizing the information for individual courts and establishing a regularized means of allocating the witnesses to courts. Another activity still in progress is developing a data bank for legal precedent and existing law. USAID is paying for the collection of data, and the Supreme Court is providing the equipment, software, and personnel for logging the data into the computers.

There is also training. With USAID support, the SCPBA has conducted a series of seven weekly seminars on judicial planning, administration and management, which when it is implemented will assist in the Planning Office's' decentralization project. More recently, the Planning Office has begun to offer extension short courses on special topics for judges and other court personnel. The courses cover such diverse topics as mediation and the examination of trial evidence and will be available throughout the province.

Because of the impressive progress made in the provincial courts, USAID is currently considering transferring its plans and resources for a judicial school in the SCN to Buenos Aires Province. As originally intended, the school would provide training to judges and other court personnel on oral procedures.

Uruguay: The Metamorphosis

By the time USAID began its work in legal system strengthening activities the structural reforms discussed above were well underway. The initiation of these reforms provided a unique opportunity for USAID to follow-up and strengthen these measures, through support for judicial training, administrative modernization, and training for court administrators. Moreover the creation of the judicial school which USAID helped fund, has become a crucial vehicle to implement other desired programs, such as the training of administrators and IDB supported effort to train judges in commercial law.

In 1990, Uruguay established CEJU (*Centro de Estudios Jurídicos de Uruguay*) to serve as a judicial school and training center for new and sitting judges. The impetus for CEJU was the new civil procedure code in 1987. After the adoption of the new civil code in 1988, the need for a judicial training program became evident. Protests at the way the judges were applying the law had become a public issue, with 60 to 70 formal complaints being filed per year. Last year after the CEJU courses and workshops began and most judges had been trained, there were only 2 or 3 complaints. Before the CEJU program was fully underway, the judges were forced--in the words of one judge--"to learn at the expense of the customers [litigants]."

The full CEJU program for judicial candidates consists of two cycles. The first consists of 270 hours of classroom learning, 40% on academic material and 60% on trial practice and other aspects of judicial behavior. The second is a 9 hour per week internship at a trial court over a three month period.

Initially, CEJU courses emphasized the substantive knowledge of the law. Over the years, the focus has shifted toward judicial behavior, communicating with counsel, staff and the public, as well as alternative dispute resolution mechanisms. Among the more important goals of CEJU training are to promote the settlement of civil conflicts and to promote judicial counseling in family law disputes, as is done in France, the U.S. and other countries.

In addition, CEJU conducts workshops for sitting judges, public attorneys (prosecutors and public defenders) and judicial staff, in order to train them in the new oral processes or to bring them up

to date in legal developments, including conciliation and mediation techniques. As an expansion of this program, the Inter-American Bank also plans to extend these course offering to teach commercial law to judges. It was an issue which the team heard repeatedly from attorneys, business leaders and NGOs that many feel would help improve the legal climate for investment and growth. CEJU appears to be a convenient and highly effective vehicle for such an activity.

Successful completion of the CEJU course is now almost obligatory for initiating a judicial career, and as a result admission standards have become more rigorous. After an initial period of almost open admission, CEJU now admits only those who have never failed a course in law school and whose psychological tests indicate the absence of authoritarian traits.

CEJU's presence has also affected the internal appointment and promotion of judges. The Supreme Court, in its power over judicial appointments and promotions, has begun a de facto policy of making participation in CEJU one of the primary criteria for advancement in the judicial system. At present, out of a total of 450 judges and prosecuting attorneys in the Uruguayan court system, 321 have participated in CEJU courses. In addition, 328 members of the professional judicial staff (*escrivanos* and other lawyers) have participated in CEJU courses in workshops.

The Supreme Court and USAID have also used CEJU to train court administrative personnel. At this point, however, the pool of CEJU graduates is quite small: 76 functionaries have received training out of a possible 4,000. Several of the informants recognized that this area will have to be expanded in time.

Currently CEJU is managed by a Tri-Partite Supervisory Commission or Board of Directors composed of six members, two each from the Ministry of Education and Culture, the Supreme Court, and the National University Law School. The commission meets regularly with the local bar association and other relevant professional or civic groups to discuss problems concerning the administration of justice.

In general, CEJU has provided an essential mechanism to strengthen the capacity of judicial employees, from court administrators to judges, not only in oral procedures, but in many of the more basic operations of the court. Almost universally, participants and observers noted that CEJU has covered many of the previous lacunae in judicial training: bridging the gap between the theory predominantly taught in school and court-room practice, teaching the nit and grit of court administration and management, and perhaps most importantly, assisting in the transition to oral procedures. Now, under an IDB grant CEJU will also provide

training in ADR techniques and commercial law to judges.

However, several sources complained about their perceived isolation of the judicial school. First, one group complained that CEJU does not include lawyers among its training teachers. Second, there was also some concern about recent plans to eliminate the Tri-Partite Commission and to place CEJU under the sole control of the Supreme Court. Both the current Dean of the National University Law School and the President of the National Bar Association, among others, are opposed to this initiative. To their thinking, the Court already has almost exclusive control over the administration of justice and, moreover, exhibits a tendency to insist on a single, rigid line of thinking and action among the judiciary. For them, the judiciary is already is too closed to the rest of society, too immune to social needs and innovations. Under strict Supreme Court control, CEJU would thus become a type of military school, autonomous of society and with an official legal ideology.

Reforms in the internal administration of the courts have produced impressive results. Under a current program to improve court management, all administrative matters have been devolved to a Director of Administration within the courts. Previous to this, like we saw in the Province of Buenos Aires, all administrative decisions were made by the Supreme Court. Now the Director manages all of the court administration, including personnel, acquisition, accounting, building maintenance, and other similar matters.

Parallel to this, USAID is also supporting with the Supreme Court a program to streamline the administrative functions of the Supreme Court and the national judicial system. Through a comprehensive Management Information System the program plans to develop a human resources data base, assist courts and administrative staffs in their planning and budgeting activities, standardize and simplify forms for gathering information, establish a central informational database, and streamline procurement procedures. In its initial stages the project has already significantly reduced the administrative workload of the Supreme Court justices. In 1991 the court handled 500 separate administrative matters in the judicial system; by 1993, after only 9 months, this was reduced to 175.

The project has also established a statistical office. Despite the early generation of statistics from the office (obtained by the CDIE team), which were rudimentary and confusing, the office has been established with very clear objectives and a close relationship with the Supreme Court. In very marked contrast to the Office of Statistics in the Argentine Federal Supreme Court, the office intends to use the data it gathers to eventually produce indicators of judicial performance such as court congestion and case duration in order to monitor court performance. The office's early results have been shared and discussed with the Supreme

Court--the intent being to highlight existing problems in the system and jointly reach a set of proposals for how to deal with them.

The complaints and problems that emerged through interviews and focus groups stemmed not from lack of interest at the top--many of these reforms were being enthusiastically encouraged from the Supreme Court--but from another set of concerns. First is the natural obstacle of bureaucratic inertia. While most court employees supported many of the reforms underway, with a court system that counts over 4,000 employees (not counting the judges) such institutional lethargy is to be expected. Since there is support in the higher reaches of the system, one would also expect that this will be overcome.

The second is a larger problem of the Justice Branch's lack of political clout. Budget battles with Congress are a yearly phenomena, where often the judiciary receives less than its original request. Budget constraints have meant that the courts are understaffed, lack technical resources such as computers, and workers are underpaid. While the CDIE team was in Uruguay, judges went on strike to demand higher pay from the Congress. One judicial worker stated that what the court needed was a guaranteed percentage of the national budget. But one journalist sounded a more pessimistic note: the cycle of strikes simply indicated the low esteem the Uruguayan political elite accords the judiciary.

Summary:

The three cases of Uruguay, the Argentine Federal Supreme Court and the Supreme Court of Buenos Aires offer clear examples of what can be accomplished with legal system strengthening measures when political will is in place. With only relatively little funding, USAID has played a dynamic role in bolstering and furthering the reform efforts in these two countries.

Conversely, the case of the Argentine Federal Supreme Court demonstrates the perils of embarking on a legal system strengthening strategy when that will is lacking. Even internally generated reforms as in the case of the Statistics Office, failed to produce much impact when there was little consensus and leadership within the court over the change.

Once more, there are also several smaller lessons to be drawn from the individual activities:

- in order to be effective, court statistics require a clear analytical focus and the attention of judicial leaders;

- diagnostic reports must be clear, for both judges and the general public, and the court must be engaged in a way that it confronts the issues raised in the study and can begin to work on methods to resolve them;

- decentralizing administration within the courts can be effective at both ends of the court system: freeing up more time for Supreme Court justices and improving management in the lower courts;

- the creation of judicial schools such as CEJURA opens a wide door for donor activity, providing a great opportunity to address deficiencies in the legal and judicial system through courses in commercial law, ADR, and the training of court personnel, beyond judges.

VI. OVERVIEW SUMMARY

The task of drawing general conclusions from the above findings is made simpler by the fact that what we examined were really three separate case studies managed by one USAID mission. The contrasts and similarities between these cases allowed the CDIE team to draw several conclusions that may be more far reaching than with one study.

The most obvious, if not glaring of these, is **the importance of elite willingness to seriously address deficiencies of the justice system in a donor assisted ROL strategy.** The contrasting cases of the Argentine National Supreme Court, the Uruguayan Supreme Court and the Buenos Aires Provincial Courts again point to the importance of *which* elites ultimately hold sway over the judicial system. In spite of the belief that a justice system is an institution isolated from the ebb and flow of public opinion (and here also we speak of the U.S.), this study would appear to indicate the opposite: that courts and the judicial system are in fact "soft" institutions, that they do feel and react to the demands and pressures of public opinion and civil society (such as the media). In both the Province of Buenos Aires and Uruguay, the decision to embark on a course of reform was assumed primarily by the judiciary; according to sources in both cases the decision was provoked by what they perceived to be the declining public esteem for the judicial system.

And the obvious assumption that political elites--forever wary of elections, opposition politicians, and public opinion--would be more susceptible to popular persuasion has, in this case at least,

proven false. Because of the history of political meddling in the Argentine court system (recent and past), the decision to reform the judicial system in Argentina will ultimately have to come from the Executive. Even with all of the political troubles the court finds itself in today, people are still looking to the President to articulate and direct the court towards a solution. But doing so is a difficult task for any politician; it requires beginning a process that may lead to the eventual independence of the justice system. In a highly politicized judicial branch, establishing a truly stable and effective justice system (*seguridad juridica*) requires more than a set of administrative reforms and training; it means a radical reorganization of the state and the relations between its institutions. For this reason, the step that a political elite must take to reform the judiciary constitutes a considerably larger--and more dangerous--one than for a coalition of judicial elites.

The second conclusion is that **structural reforms *may* provide a unique moment in a country's legal history to significantly assist in the deep reorganization and improvement of its judicial system.** In most cases, the successful implantation of structural reforms indicates a high level of consensus for change in the upper reaches of the court system. And it is this coupling of elite willingness to reform and the institutional wake of structural changes that permit such a promising opening for donor activity. The creation of CEJU has created a huge window of opportunity for changing the Uruguayan system, not only through the assistance USAID could provide in training judges in oral procedures, but also in the training of administrators, lawyers, and, now with the IDB loan, in the introduction of ADR to the judges. The impact of these programs will endure for many years, changing the character and the performance of the courts from within: from the people who staff it.

Third, **where there does exist a strong and coherent elite coalition for reform, getting to where the courts wish to go may require only a small push.** In both Uruguay and Buenos Aires Province, the willingness of the justices and the upper level court officials to improve the justice system allowed USAID to provide the means to address the concerns and issues that they identified. In these cases, the role of donors becomes more to direct and complement the activities and interests of the reform-minded coalition. As these case studies have shown, when the internal desire for change is already present, the technical assistance and symbolic support of the funds donors provide may be worth more than the actual dollar value.

This leads to the fourth conclusion which, ironically, one can draw from the case of Argentine Federal Court System and apply to the others. **Holding the state accountable for continuous enforcement of**

agreed-to reforms is a critical factor in any reform agenda. This requires continuous prodding and pressure by constituencies outside of the justice system, a feature that highlights the importance of not only an early but also a continued constituency building strategy as a means of sustaining institutional change.

Fifth, while the Argentine Supreme Court of the Nation has not until now shown much progress, **the ability of USAID to refocus its efforts with considerable success on popular constituency building, was in a large part a function of the country's socioeconomic development.** As an advanced developing country, Argentina had many of the pieces in place for a high impact popular-constituency building program. High rates of literacy, a free and vigorous media, a large middle class, and extensive public polling provided a fertile environment for sowing the seeds of reform. This convergence of factors has been beneficial in two ways. First, the thick network of communication--media, polling organizations--and the existence of a large middle class, created a dynamic context for NGOs to inform Argentine citizens and increase public awareness over the shortcomings in the judicial systems. Moreover, the presence of a literate and sizeable middle class and a large and dynamic commercial sector ensured that a larger portion of the country's population would have a significant stake in the improvement of the legal sector.

In the cases where there is a great discrepancy in wealth and the country's private sector remains rudimentary or dispersed, this constituency is harder to find, or may be need to be assembled. For the former this may call for a greater effort in legal aid and literacy programs to first educate sectors of the population to their legal rights and the duties and responsibilities of the judicial system. However, that these conditions were already present in Argentina has permitted USAID to pursue what up until now appears a successful strategy--at least as far as it brings the issue of judicial reform to the political forefront.

Second, at the same time, the activity and political force of the media and polling organizations in Argentina have served as channels to clearly and at times forcefully articulate the demands of the NGOs and the larger public to their leaders. As individual actors in the private civil society, these instruments lack the means to enforce elite compliance, and without an effectively independent judiciary their capacity to punish elite malfeasance or corruption is also somewhat limited. In these cases, the primary mechanism for sanctioning or punishing political leaders has been elections; an imperfect mechanism, to be sure, but one that for the moment has kept politicians looking over their shoulders at what the press and the public thinks and do.

Argentina has reached the critical turning point in regard to its legal system; one which depending on the path political leaders choose to take may also have dramatic implications for the stability of democracy. For the moment it appears that the Argentine public favors reform over revolution or a return to a military government. A series of polls conducted by Mark Jones at the University of Michigan concluded that while close to 60% of Argentines are disenchanted with current state institutions, over 80% still prefer reform as a solution to their collective malaise to revolution or a return of the military. (This applies to all state institutions including Congress, the civil service and the armed forces.) However, as Jones notes in his conclusion "given time this disenchantment could easily translate into support for either of the non-reformist options" such as revolution or a coup. Thus the challenge that faces the Argentine political leaders is to restore confidence in its key democratic institutions as soon as possible.[31] How the executive decides to respond to the current cacophony of demands for the reform of the judicial system will undoubtedly be crucial, not only for the integrity and effectiveness of the Argentine judicial system but for the future of democracy as well.

And last, **USAID can serve effectively in a pioneering or trailblazing capacity in the ROL field**. In Uruguay, the mission's early successes in testing the political waters through its policy dialogue with the Courts and its initial activities have been instrumental in attracting the interest of the UNDP and the IDB. Both donors acknowledged the USAID's earlier activity in this field was crucial to their involvement. Furthermore, USAID's assistance in the creation of CEJU has provided a critical entry point for other donors to join the judicial system in other reforms in the donors' particular field of interest, such as the IDB-funded commercial law training for judges and ADR.

In an indirect way, USAID's support for popular reform constituencies in Argentina also may have helped to lay the political foundation for the World Bank/Ministry of Justice study by increasing public and thereby elite attention on the justice system. USAID in its work has also helped to identify and strengthen a number of technical NGOs and sectors within the Ministry of Justice (such as ADR) that the World Bank projects will be able to build upon. The World Bank has expressed some interest in carrying on several of the activities initiated by USAID in the

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[31] Mark Jones, "A Comparative Study of Popular Confidence in Democratic Institutions in Argentina, Chile and Mexico" Paper presented at the XVII International Congress of Latin American Studies Association, Los Angeles California, September 25-27, 1992.

World Bank project when USAID phases out their operations in Argentina, .

As the Agency looks ahead to a time of significantly constrained resources, the trailblazing approach it has pursued in Uruguay and Argentina appears increasingly attractive. As the team witnessed in its trip, the small experimental activities pursued by USAID in Uruguay and Argentina have tested the possibilities for judicial reform and in some cases established a positive basis for future reform efforts. Many of these activities could not have been carried out by a larger donor that disburses funds in lump sums for predominantly administrative reforms.

In these cases, the flexibility and the official weight of a donor such as USAID offers an effective means to test the possibilities and limits for future--and larger--efforts and also begin to build popular or elite bases that support more specific reform efforts. Such efforts will help to generate greater elite interest and organizational opportunities for either the more specific work that IDB is undertaking in Uruguay or the more general and sweeping programs that the World Bank is considering in Argentina.

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Annex A

Persons Interviewed

Uruguay:

USAID/Uruguay

Abella, Juliana -- Administration of Justice Project Officer, Argentina/Uruguay
Asselin, Robert -- USAID Representative, Argentina/Uruguay
Belza, Juan Carlos -- Legal, Regulatory and Legislative Project Officer, Argentina/Uruguay

United States Information Service Montevideo

Moody, Larry -- Cultural Officer
Orlando, Rubic -- Press Officer

United State Embassy

Ritchie, John -- Political Officer

International Donors

Hughs, Corado Alvarez -- Coordinator for the Inter-American Development Bank
Martínez, Ernesto Badano -- Sectoral Specialist, Inter-American Development Bank
Martínez, Nestor -- Deputy General Counsel, Inter-American Development Bank, Washington, DC
Radovic, Vladimir -- Inter-American Development Bank Representative in Uruguay
van Hanswijck de Jonge, Paul -- United Nations Development Program Representative, Argentina

Others

Ache, Jorge -- Attorney for the Municipal Government of Montevideo
Arbilla, Daniel -- Director of *La Buesqueda*
Blanco, Cecelia -- Member of the Colegio de Abogados
Boubet, Carlos -- Manager of Uruguayan/American Chamber of Commerce
Caillabet, Horacio -- Administrative Director of the Courts
Chamarchourdijian, Rosa -- Administrative Director of the Courts
Delgado, Silva -- Director of CEJU

Ferrere, Daniel -- Attorney with the Uruguayan/American Chamber of Commerce
Ferro, Jose Antonio Astray -- Private Attorney
Galli, Pablo -- General Manager Pepsi Cola Interamericana
Gelsi, Bidart Adolfo -- Dean of the Law College of the National University
Henón, Jorge -- Director of the ADR Project
Hughs, Horacio -- General Manager of Abal Hnos., SA
Inthamoussu, Alfonso Ramos -- Researcher at CERES
La Penne, Eduardo -- President of the Colegio de Abogados
Landoni, Angel Sosa -- Professor of Procedural Law at the National University and Attorney with the Banco Hipotecario
Lorenzo, Ana -- Civil Judge, Montevideo
Marabotto, Jorge -- Chief Justice of the Supreme Court

Montero, Perez Estela -- Director of the Judicial Power Modernization Project
Peirano, Ricardo -- President of CERES
Pinilla -- Director of Gallup Institute of Uruguay
Sayaguéz, Alberto -- Director of PRONADE
Tarigo, Enrique -- Former Vice-President of Uruguay
Tomassino, Armando -- Director of Ethics Code Project
Véscovi, Enrique -- President of CEJU Commission

Focus Groups

Court Administrators -- Montevideo
Attorneys and Specialists in Commercial and Labor Law -- Montevideo
Judges -- Montevideo

Argentina

USAID

Abella, Juliana -- Administration of Justice Project Officer, Argentina/Uruguay
Asselin, Robert -- USAID Representative Argentina/Uruguay
Summers, Sam -- USAID IESC Representative Argentina

USIS

Davis, Liza -- Assistance Cultural Attache

U.S. Embassy

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Cheek, James -- U.S. Ambassador
Dunn, Timothy -- Political Officer

Federal Capital

Alvarez, Gladys -- Fundación Libra
Arguello, Daniel -- Manager of Court Training
Avila, Arturo Vazquez -- Court Administrator working with FME/AA Study
Barbiene, Martha de Buono -- Director of Training, Ministry of Justice
Bidart, Beba -- Professor at the Facultad de Ciencias Económicas, Universidad de Buenos Aires
Barro, Daisy -- Sub-Secretary of Legislative Affairs/Ministry of Justice
Bielsa, Rafael --
Bomer, Martin -- Center of Institutional Studies
Cacurri, Graciela -- Head of Office of Statistics, National Supreme Court
Canaglione Fraga -- President of the Association of Magistrates
Cantero, Juan Carlos -- Secretary of Legislative Affairs/Ministry of Justice
Capalbo, Daniel -- Reporter with "SOMOS"
Carballo, Marita -- President, Gallup Argentina
Cier, Jose Maria -- Fundación Libra
Cicchelo, Dr. -- President of the Colegio Publico de Abogados
Conen, Cristian -- Director of Austral University
de Michele, Roberto -- Poder Ciudadano
Davis, Bill -- USAID consultant
Fillol, Tomas -- Vice President of Bratec, S.A.
Flynn, Luis Maria -- Fundación para la Modernización del Estado
Gak, Leonardo -- Professor at the Facultad de Ciencias Económicas, Universidad de Buenos Aires
Gorleri, Marie Louise -- Conciencia
Gregorio, Carlos -- Author of USAID funded diagnostic study
Highton, Elena -- Fundación Libra
Jasan, Elias -- Secretary of Justice
Kiper, Claudio Marcelo -- Former Judicial Superintendent/Court Administrator
Lavieri, Omar -- Political reporter for "Clarín"
Lynch, Horacio -- FORES
Martini, Maria Rosa -- Conciencia
O'Conner, Eduardo -- Supreme Court Justice
Ocampo, Luis Moreno -- Director of Poder Ciudadano
Ohyararte, Marta -- Poder Ciudadano
Pardo, Dr. -- IDEA
Pasik, Hugo Educardo -- Secretary General of the Asociación de Abogados
Passuni, Norberto -- Fundación la Ley

Pinedo, Sofia -- Conciencia
Pipino, Ricardo -- Director of News for Channel 14
Prado, Juan José -- Lawyer, activist
Rayo, Ana -- National Public Defender
Rodriguez-Quiroga, Enrique Luis -- Fundación la Ley
Sigal, Jorge -- Reporter with "SOMOS"
Stanga, Silvana -- FORES
Tarrio, Mario -- Coordinating Attorney for Ministry of Justice Legal Aid/Mediation Centers
Terzano, Mario -- World Bank Consultant Heading the Judicial Sector Evaluation
Urbiztondo, Santiago -- Professor Instituto di Tella
Valle, Emilio Augustin -- Vice President of the Associación de Abogados de Buenos Aires

Buenos Aires Province

Domenichi, Dr. -- Penal Court Judge
Laborde, Elias -- Chief Justice of the Supreme Court
Masia, Maria -- Penal Court Judge
Salas, Juan Manuel -- Penal Court Judge
San Martin, Guillermo -- Justice of the Supreme Court
Simoncelli, Juan Carlos -- President of the Colegio de Abogados, Province of Buenos Aires
Vaz, Hortensia Flores -- Subsecretary of the Office of Planning

Focus Groups

Graduates of USAID Supreme Court Administrative Training Courses
Ten Official Mediators
Social Workers and Public Defenders at FORES Seminar in Buenos Aires Province

Annex B

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